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JSOU Report 13-2

Retooling for the Future

Wong-Diaz

# Retooling for the Future



Francisco Wong-Diaz  
JSOU Report 13-2  
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**On the cover:** A chess board (top) symbolizes “Western” strategy, while a Weiqi board (bottom), commonly played in China, symbolizes “Eastern” strategy. Photos used by permission of Newscom.





# *Retooling for the Future*

Francisco Wong-Diaz

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# Foreword

China is undeniably a rising power on the world stage; according to Dr. Francisco Wong-Diaz, whether or not China will become a peer competitor to the United States is not as important as its strategic culture. China's military spending is on the rise, its economy is now half as large as the U.S. economy, and its territorial ambitions in the region are worrying to China's immediate neighbors; yet it is far from parity. Many see an inevitable strategic conflict of interests between China and the United States. Others see the rise of China as an opportunity for the U.S. to collaborate on international security. Businesses see potential for both new markets and competition from cheap labor. The perceptions of China vary dramatically—however, it is clear China cannot be ignored.

As Dr. Wong Diaz points out, President Obama has articulated that the United States will remain a Pacific power and needs to focus on the Far East. While the challenges and efforts of the last decade will only be ignored at our peril, a shift of focus to the Asia Pacific area will present profound and unique challenges to U.S. strategic thought. Yet, the lessons learned from the wars in Iraq and Afghanistan may be very useful as the defense establishment starts to ponder U.S. efforts in the Pacific region and the unique Chinese strategic perspective.

Dr. Wong-Diaz emphasizes the Chinese concept of unrestricted warfare (URW) in this thought-provoking monograph. Whether the Chinese approach economic and military parity with the United States is of secondary concern to the strategic vehicle they will use to influence regional and global behavior. URW will fundamentally challenge the United States' capability to engage China with a coherent strategy. However, the asymmetrical approach of the Chinese is not as foreign as it once may have been. Counterinsurgency and asymmetrical threats are now within the paradigm of U.S. thinkers more than at any time in the last 30 years. This foundation presents an opportunity for the U.S. to begin to tackle the complex nature of the Chinese strategy.

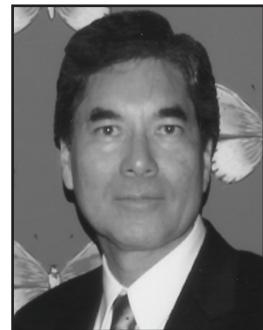
With the increasing challenge of a rising China, Dr. Wong-Diaz comes to grips with URW in a way that allows the reader to garner a concise understanding of the monumental task of countering such a strategy. As the author points out, the task will be challenging, even daunting, and requires a concerted effort. It will also require a realistic analysis and action on our weakness that an asymmetric opponent can leverage such as lawfare. How-

ever, the United States has an opportunity to proactively come to grips with the strategic challenges of a regionally dominant China. As the United States “pivots” toward the Asia-Pacific region, it is better to understand the strategic challenges today rather than tomorrow, and a strategic retooling will be required that will certainly involve SOF.

Kenneth H. Poole, Ed.D.  
Director, JSOU Strategic Studies Department

## About the Author

Dr. Francisco Wong-Diaz is a senior fellow with the Joint Special Operations University Strategic Studies Department. A naturalized American citizen, he is emeritus of international affairs and law at the City College of San Francisco and expert subject lecturer at the U.S. Air Force Special Operations School. A member of the Global Futures Forum, he was an academic fellow on terrorism with the Foundation for the Defense of Democracies (2007).



Previously he was a fellow at the University of California (UC) at the Berkeley Center for the Teaching and Study of American Cultures (1995); visiting scholar and research associate at UC Berkeley Graduate School of Business (1983); visiting researcher at the Hoover Institution (1971); and Rackham fellow in political science at the University of Michigan (1967 to 1970). He has taught at the University of Michigan (1967 to 1969), University of Detroit (1967), and San Francisco State University (1977) and presented at Columbia University School of Law, Stanford University, The University of Texas, University of Southern California, University of Miami (Florida), and others. His interest areas include U.S. foreign policy, strategy, counterterrorism, intelligence, national security law, and Cuban and Latin American politics.

Dr. Wong-Diaz is an active member of the State Bar of California (1980), the Florida Bar (1987), and the U.S. District Court for the Northern District of California (1981). A former research assistant to the Honorable Frank Newman, Associate Justice of the California Supreme Court (1976 to 1977), and law clerk of the presiding judge of Marin County Superior Court (1980), he served on the editorial boards of the *California Lawyer* (1991 to 1994), the *Industrial Relations Law Journal* (1975 to 1976), and the *Ecology Law Quarterly* (1976). A U.S. Department of State diplomat/scholar (1975), he served as dean/director of the Inter-American Center at Miami-Dade College (1985 to 1986); special assistant to the chancellor (1984 to 1985) and chairman of Latin American Studies/Coordinator of Legal Studies at the City College of San Francisco (1979 to 1985).

Recent major publications include *Castro's Cuba: Quo Vadis?* (Strategic

Studies Institute, U.S. Army War College, December 2006) and *American Politics in a Changing World* (2004 revision). His articles, commentary, and op-editions have also appeared in *The New York Times*, *San Jose Mercury News*, *Washington Times*, *Marin Independent Journal*, *Hispanic Magazine Online*, *FrontPage* magazine, and elsewhere. For over two decades he has provided political analysis and news commentary in Spanish for Univisión and guest appeared on national radio broadcasts, PBS, NBC News, CBS, and other media outlets. Dr. Wong-Diaz is listed in Who's Who in America, Who's Who in the World, and Who's Who in American Law. Memberships include the Pacific Council on International Policy, American Bar Association (Standing Committee on Law and National Security), International Institute for Strategic Studies, Proteus U.S. Army War College, Committee on the Present Danger, the Association for the Study of the Middle East and Africa, Commonwealth Club, and the World Association of International Studies. He was recognized as one of the "100 most influential Hispanics in the nation" by *Hispanic Business* magazine.

Dr. Wong-Diaz received his B.A. in Political Science (1965) from Northern Michigan University, M.A. in Social Science (1967) from the University of Detroit, M.A. in Political Science (1970) and Ph.D. in Political Science (1974) from the University of Michigan, and Juris Doctor from UC-Berkeley School of Law (Boalt Hall, 1976). He specialized in national security law at the University of Virginia School of Law Center for National Security Law (1996) and in trial advocacy at UC-Hastings College of the Law (1995).

## Introduction

The first two decades of the 21st century presented a global security environment unanticipated by the end of the Cold War and bipolarity between the United States and the former Soviet Union. The unipolar world that followed the Soviet collapse is transforming into a multipolar system driven by the challenging rise of China, a resurgent Russia, an economically weaker European Union, and the development of India, Brazil, and Germany as independent power centers.

Meanwhile, state actors like North Korea and Iran have acquired or seek to acquire the capability to cause catastrophic nuclear destruction, while at the other end of the spectrum violent non-state actors like al-Qaeda challenge the nation-state system itself. As the United States moved to end its decades-long intervention in Iraq and begins to wind down the war in Afghanistan, the uprisings of the Arab Spring altered the strategic map of the Middle East. Against this backdrop, on 5 January 2012, the Department of Defense (DOD) released a new strategic guidance articulating priorities to sustain U.S. global leadership during the 21st century.

The guidance reflects the DOD's need to affect significant budget cuts mandated by Congress in the wake of the 2008 economic crisis, implement the Obama administration's new strategic turn or "pivot" to the Asia-Pacific region, and complete a reduction in European-based U.S. forces. It seeks to rebalance U.S. foreign, economic, and military policy as U.S. military forces would no longer be sized to "conduct large-scale, prolonged stability operations" like the ones in Iraq and Afghanistan, since the aim was to have a joint force that was "smaller, leaner, agile and flexible, able to work within a range of operational concepts and environments."<sup>1</sup>

The shift toward the Asia-Pacific, in particular, has significant implications for the future of Special Operations Forces (SOF) in an age of austerity and war fatigue in light of our Asian adversaries' presumed adherence to the strategic concept of unrestricted warfare (URW). As a result, in this study—after addressing the background and meaning of the U.S. strategic rebalancing or pivot to the Asia-Pacific region—we analyze the meaning and challenges presented by the Asian strategy of URW and how it seeks to reshape the global security environment.

We illustrate the multidimensional nature of the challenges presented

by the Asia-Pacific to the SOF community as it retools for the future by highlighting one important dimension of URW known as “lawfare.”

## 1. A Strategic Pivot or Rebalancing?

Writing in the journal *Foreign Policy* in November 2011, former Secretary of State Hillary Clinton stated, “As the war in Iraq winds down and America begins to withdraw its forces from Afghanistan, the United States stands at a pivot point. … One of the most important tasks of American statecraft over the next decade will therefore be to lock in a substantially increased investment—diplomatic, economic, strategic, and otherwise—in the Asia-Pacific region.” Furthermore, she indicated that the “pivot” raises the priority allocated to Asia-Pacific in U.S. foreign policy.<sup>2</sup> On 17 November 2011, President Obama addressed the Australian Parliament to reaffirm the U.S. alliance with Australia and:

To address the larger purpose of my visit to this region—our efforts to advance security, prosperity, and human dignity across the Asia-Pacific. For the United States, this reflects a broader shift. After a decade in which we fought two wars that cost us dearly, in blood and treasure, the United States is turning our attention to the vast potential of the Asia Pacific region. … As president, I have, therefore, made a deliberate and strategic decision—the United States has been, and always will be, a Pacific nation … the United States will play a larger and long-term role in shaping this region and its future, by upholding core principles and in close partnership with our allies and friends.<sup>3</sup>

In his speech, President Obama highlighted security as the foundation for peace and prosperity and stressed that reductions in defense spending would not come at the expense of the Asia-Pacific region.<sup>4</sup> Along the same lines, General Martin E. Dempsey, Chairman of the Joint Chiefs of Staff, speaking later that month in London about the current security environment, said that given potential threats posed by state and non-state actors and emerging and re-emerging nations like China, the world may be facing a strategic *inflection point* as important as the one facing Allied leaders in World War II (WWII). A condition that is reflected in the ongoing proxy war between Turkey and Iran with Iran supplying weapons to Syria and Turkey arming the opposition while the United States, Russia and China hover in the background.<sup>5</sup>

Former Secretary of Defense Leon Panetta in a televised interview also

spoke about facing a strategic turning point after a decade of two wars. He noted that DOD is confronting substantial defense cuts, but unlike past drawdowns (e.g. WWII, Vietnam) the country faces a number of outstanding challenges and threats that have not gone away—ranging from terrorists and nuclear proliferation, to Iran and North Korea. Secretary Panetta was asked specifically about the pivot and “What does that mean? Does that mean containing China’s growing power? When you call for this new emphasis or shift, what would you do now that—what would you do now that you are not able to do?” He responded, “I think the most important thing is obviously maintaining our naval presence out in the Pacific, maintaining our military presence.”<sup>6</sup> Six months later, while attending the Shangri-La Dialogue of the 11th International Institute for Strategic Studies Asia Security Summit in Singapore, Secretary Panetta announced that as part of the rebalancing by 2020 about 60 percent of the U.S. Navy would be repostured in the Pacific.<sup>7</sup>

According to the Congressional Research Service (CRS), the so-called ‘pivot’ to the Pacific is a continuation and expansion of policies already undertaken by previous administrations and is now largely driven by four factors: China’s new status as the world’s second economic power, its growing military capabilities and more assertive maritime posture, the winding down of U.S. operations in Afghanistan, and the need for U.S. federal budget defense cuts. The CRS says that underlying the pivot is the conviction that the “center of gravity for American foreign policy, national security, and economic interests is shifting to Asia.”<sup>8</sup> It should be noted that the decision to refer to this strategic turn as a pivot was mostly driven by the Department of State and the National Security Council with the DOD preferring to refer to it as a “rebalance.” The difference in language is important since a pivot might be seen as temporary and reversible while a rebalancing suggests a more permanent commitment and sustained performance since continuity of commitment to our friends and allies in the region is at issue. The strategic move is not a sharp break with the past because it brings the United States back to its role as a protector of the global commons—oceans, airspace, and outer space.

Historically speaking, the U.S. shift to Asia began four decades ago during the Cold War period. President Richard Nixon’s 1972 memorable visit to Beijing ended the policy of isolation of the People’s Republic of China (PRC) following the “ping-pong” diplomacy. For almost a century China had been a failed state until the PRC was established. The United States did

not even recognize the PRC as a legitimate government for 30 years until 1979.<sup>9</sup> The Nixon-Kissinger Realpolitik strategy that led to the February 1972 China Summit with Mao Zedong repositioned the international system as the United States moved to help strengthen the PRC as a counter to the Union of Soviet Socialist Republics.<sup>10</sup> Subsequent administrations continued the Nixon policy of engaging the PRC in particular as it began to reform and accelerate its economic development after Mao's death in 1976. Led by Deng Xiaoping, beginning in 1978 Mao's successors discarded many of his domestic policies and began reforms that accelerated economic growth with annual gross domestic product (GDP) growth rates averaging 10 percent. The rapprochement between the two countries culminated in the Taiwan Relations Act of 1979 (United States Code Title 22 Chapter 48 Sections 3301-3316) that extended diplomatic recognition to the PRC as the legitimate government of China.

The U.S. has had a lot to do with the economic and military rise of China since Richard Nixon and Henry Kissinger traveled to China and sought an alliance with the PRC against the Soviet Union. Their visit to Beijing, for instance, laid the groundwork for the export of advanced dual technology to China. Later in 1993 the Clinton administration, after chastising the "butchers of Tiananmen Square," loosened export restrictions allowing, among other things, the sale of Sun Microsystems supercomputers to China.<sup>11</sup> As Aaron Friedberg and James Mann have documented respectively since the 1970s we have basically armed China against ourselves.<sup>12</sup> In the late 1990s some experts were still debating whether China was a rogue nation or near-collapse.<sup>13</sup> A sort of answer came in February 2009 when new U.S. Secretary of State Hillary Clinton, breaking with a 48-year-old tradition, embarked to Asia on her first official overseas trip instead of Europe. During her tenure as secretary of state she traveled to the Asia-Pacific more than twice the number of times of her predecessor Condoleezza Rice. Despite its campaign rhetoric, from the beginning the Obama administration followed a course traced under President George W. Bush with the United States strengthening relations with allies in Asia, moving toward a more flexible and sustainable troop presence in the region, concluding a free trade agreement (FTA) with South Korea, bringing the United States into the Trans-Pacific Partnership FTA negotiations, and forging new partnerships with India and Vietnam.<sup>14</sup>

As noted below, what is different about the Obama-Clinton shift to Asia is its emphasis in the military sphere. The new defense strategy, or pivot, does

not only shift the focus of attention to the Asia-Pacific but it includes a shift from having the capability to fight two regional wars at the same time to a “win-spoil” plan. Under this new plan the United States will maintain a capability to fight and win one regional war while acting to “spoil” the military actions of a second adversary elsewhere. As part of the rebalancing, ground forces will be reduced in favor of air and sea forces that will operate in a maritime and littoral theater. So over the next few years the U.S. Army and Marine Corps will reduce the number troops, while the Navy and Air Force will be maintained at current levels. To some, this emphasis on air and naval forces is a risky strategy because it does not provide flexibility and might limit the U.S. ability to respond to unexpected events at the low end of the military spectrum creating a sort of “strategic monism.”<sup>15</sup> One response to this criticism is that as part of this new defense strategy the number of SOF under U.S. Special Operations Command (USSOCOM) and their mission roles will significantly increase to provide agility and flexibility in power projection operations. Nonetheless, what *The Economist* calls the 10-year strategic distraction of the campaigns in Iraq and Afghanistan—coupled with the global economic crisis, the confrontation with Iran, and the economic growth and military buildup of the PRC—have placed the U.S. at an inflection point, in General Dempsey’s words, generating a sense of urgency for the redirection of attention and effort to rebalance in order to maintain our standing as the dominant Pacific power.<sup>16</sup>

## 2. A Great Power Transition?

In the field of international relations the Power Transition Theory addresses the rise and decline of great powers from the Peloponnesian Wars to the collapse of the Soviet Union. The theory has its critics because of its cyclical approach to historical events and reliance on two main variables—power parity and degree of satisfaction or dissatisfaction.<sup>17</sup> Nonetheless, the conceptual framework is useful as students of power transition theory see a familiar scenario developing as the U.S. finds itself at a strategic crossroad facing budgetary cuts while disengaging from two long-drawn wars in Iraq and Afghanistan. Power transition theory fundamentally sees the global system as being anarchical and hierarchically structured with dominant, great, middle, and small powers. The international system remains stable (status quo) for as long as the dominant power and its allies remain in control. The system is also dynamic as the distribution of power among states ebbs and flows as they move up and down the power pyramid. A critical point exists where the dominant power seeks to maintain the status quo and its position atop the pyramid while rising revisionist challengers seek to alter their position or eliminate the established system. Simply put, the theory posits a scenario where the dominant power begins to decline while the power of one or more contenders is rising. At some point the interests of a dissatisfied rising power will clash with those of the dominant and they might be unable to resolve their differences peacefully. Dissatisfaction is a necessary but insufficient factor, however, since it is relational between the nation-states. Perceptions of relative power also play an important role. Since the dominant power may perceive that it is unable to delay or decelerate its power decline it may seek to militarily preempt the stronger challenger while it has the capability. On the other hand, the rising challenger may seek to bring down the dominant power by deception and surprise attack as its relative power increases. The probability of conflict significantly increases as both enter the inflection point area where the downward curve of the declining power meets the upward curve of the rising challenger. One measure of power used in the analysis is gross domestic product (GDP).<sup>18</sup>

General Dempsey's inflection point corresponds with former Chairman of the Joint Chiefs of Staff Admiral Mullen's often quoted statement that "Our national debt is our biggest national security threat." This may suggest to policymakers that unless the U.S. economy begins to recover, or alternatively

China slows down its economic growth and military buildup, we might be approaching a zone of dangerous conflict.<sup>19</sup> Obviously, key to this process are the policymakers and military leaders' perceptions and the metrics used by both sides to establish their power calculus. In the contemporary situation such factors as whether China is a status quo or a revisionist state dissatisfied with the existing order, whether or not and to what extent might the U.S. be in decline, and if so whether it is doing so at a fast or slow rate will influence their interpretation of reality and shape their decision making. Because miscalculation and misperception could precipitate a military conflict with grave consequences, a consistent emphasis on transparency about intentions and capabilities has played a major role in U.S. dealings not only with China but with other authoritarian regimes like Iran and North Korea. A cautionary posture about power transition analysis is addressed by historian Niall Ferguson who after comparing the swift collapse of several empires asked "But what if history is not cyclical and slow-moving but arrhythmic—at times almost stationary but also capable of accelerating suddenly, like a sports car? What if collapse does not arrive over a number of centuries but comes suddenly, like a thief in the night?"<sup>20</sup> The collapse of the United States due to a combination of fiscal deficits and military overstretch may be more sudden than most imagine. Such is the logic behind the U.S. efforts to achieve more transparency by maintaining military-to-military relationships with China, albeit China's practice is to turn them on and off when displeased with U.S.

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*Presently, due to the economic crisis, the focus is on the economic rate of China's growth and the economic stagnation of the United States and the West as independent factors influencing the military balance.*

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behavior. Presently, due to the economic crisis, the focus is on the economic rate of China's growth and the economic stagnation of the United States and the West as independent factors influencing the military balance.

Worthy of consideration is what might happen in the

historical record showing militarily and economically less powerful states initiating war against a stronger state. The theory of deterrence postulates that the military superiority of the status quo (dominant) power together with a credible retaliatory threat would deter attack by challengers. Yet, in 1904 Japan attacked Russia and in 1941 the United States at Pearl Harbor; in

1950 a weaker China intervened against the U.S. and the United Nations in Korea; in 1973 Egypt crossed into the Sinai; and in 1982 Argentina invaded the Falkland (Malvinas) Islands provoking a British expeditionary counterattack.<sup>21</sup> China in the 21st century seeks to avoid the mistakes made by weaker powers that initiated conflicts and lost. Until recently, Chinese leaders since Mao have been patient, cautious, and reassuring of their “peaceful rise” in their dealings with the U.S. and the rest of the world.

From a military standpoint the pivot to Asia is a continuation of a return to the Asia Pacific region interrupted by a decade of war in the Middle East following the 9/11 terrorist attacks. From a SOF perspective, it means a rebalancing of resources and deployments from the U.S. Central Command area of responsibility (AOR) to the U.S. Pacific Command (PACOM) AOR at a time when China is rapidly modernizing its military and, among other things, expanding its special forces units.<sup>22</sup> Unfortunately, the timing overlaps the worst economic crisis since the Great Depression and is a reminder of Sun Tzu’s comment that long military campaigns are a plague to a nation—“When power and resources are exhausted, then the homeland is drained.”<sup>23</sup> Since the challenges presented by violent extremism, the aftermath of the Arab Spring, nuclear North Korea, Iran nuclear facilities, and instability in Pakistan have not evaporated, a recent strategic analysis recommends that the U.S. should balance the pivot to Asia with a hedge to the Middle East.<sup>24</sup> Along those lines, Friedberg proposes a different combination for rebalancing called “congagement plus,” that is a combination of containment and engagement with an emphasis on military power projection.<sup>25</sup>

Similarly, a gloomy Charles Kupchan believes that the decline of the U.S. will lead to a multipolar world with no center of gravity and no guardian, so the U.S. should abandon its overzealous democracy promotion agenda and treat China with a “nuanced mix of engagement and containment.”<sup>26</sup>

A sort of “hedge within the pivot” was evident at the time of President Obama’s November 2011 visit to Australia. To assuage the concerns of Asian allies and friends and signal resolve the president announced that the U.S. would be sending 250 Marines rotating in and out of a base in Darwin for approximately six months at a time building up to a force of 2,500 personnel over the years. The announced deployment was interpreted by the media as an attempt to enhance credibility at a time of budget constraints by affirming the U.S. commitment to Asia-Pacific and as a counter against China’s military buildup. As the president put it, “We welcome a rising, peaceful China,” but

the U.S. will send a “clear message that they need to be on track in accepting the rules and responsibilities that come with being a world power.”<sup>27</sup>

In response to the new defense posture, China’s Ministry of Defense spokesman Geng Yansheng warned in the ministry website that:

We have noted that the United States issues this guide to its defense strategy, and we will closely observe the impact that U.S. military strategic adjustments has on the Asia-Pacific region and on global security. … The accusations leveled at China by the U.S. side in this document are totally baseless. … We hope that the U.S. will flow with the tide of the era, and deal with China and the Chinese military in an objective and rational way, will be careful in its words and actions.<sup>28</sup>

Some American commentators have also objected to the pivot from a fiscal policy perspective arguing that the administration can cut defense spending or pivot to Asia—but not both. While supporting the maintenance of large bases in Japan and South Korea, and the deployment of Marines, navy ships, and aircraft to the Northern Territory of Australia as an initial but important step, they argue that the defense budget cuts undermine the new strategy of stationing new combat ships in Singapore and negotiating with the Philippines to base naval ships at existing facilities.<sup>29</sup> The warnings by General Dempsey and Admiral Mullen, on the other hand, mimic President Ike Eisenhower’s viewpoint that the nation’s fiscal health is a national security concern. The warnings also convey a sense of urgency; the Asia-Pacific challenge to the U.S. is that China’s economic growth is the engine behind its military buildup, just like the United States status as a global superpower hinged on its economy.<sup>30</sup>

For some time now civilian and military analysts have been discussing the themes of the China dream and the China threat. One pessimist about China’s ability to sustain its economic growth has described the China dream in terms of American and Western European hopes of reaping riches from expanding trade, investing, and selling to China. For centuries since Marco Polo, China’s large population has been a magnet for traders and merchants hoping to make it big. In fact, the West and its allies in Japan, Taiwan, and South Korea have had a lot to do with the rapid economic growth of China in the 1990s as over \$300 billion in foreign investment poured into China. Unfortunately, many

Western businesses seeking unlimited opportunities have encountered cultural and political factors that made the Chinese market seem impenetrable.<sup>31</sup>

A recent example of how that China dream might turn into a business nightmare is the experience of Google, which opened its first

office in China in

2005. Since its arrival Google was harassed by hackers to the extent that in June 2009 a “DNS poisoning” attack caused Google to crash worldwide. Google also lost market share to its Chinese government-supported rival Baidu, and after becoming a target of state media attacks due to a clash with the government over censorship, it shut down its search engine on 22 March 2010 and pulled out of China. Thereafter, on 24 March, Go Daddy, the world’s largest Internet domain name registration company, announced that it would no longer register web addresses in China due to tough new personal-identification requirements.<sup>32</sup> Two years later, the Wall Street Journal reported that Google was renewing its push to expand its operations to China because it could not afford to miss out on the world’s largest Internet market.<sup>33</sup> One lesson learned is that in order to operate in China’s economic environment foreign companies and investors must adjust their actions and expectations to the day-to-day operations of an authoritarian political system.

Some believe that China and America are bound to be rivals, but they do not have to be antagonistic.<sup>34</sup> For others the China dream turns into the nightmare of the “China threat” due to the challenge presented by China’s ongoing military “modernization” and regional hegemonic aspirations.<sup>35</sup> Despite its unprecedented economic growth rate, China remains a highly populated (1.3 billion) poor country with a GDP that is one third of the

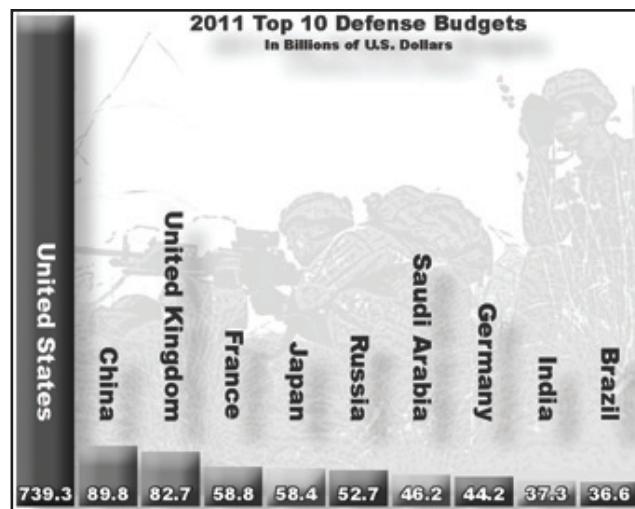


Figure 1. 2011 Top 10 Defense Budgets.

United States, with a plethora of domestic issues ranging from an aging population, a birthrate below replacement due to a one-child policy, growing differences in wealth between the heavily populated, rich coastal areas and restive rural areas, to severe air pollution in industrial cities. As the country moves through a new leadership transition process, sustaining a high rate of economic growth and addressing an array of domestic issues will remain the new government's priorities. In addition to these many domestic concerns the fact remains, as shown in Figure 1, that in 2011 the U.S. defense budget surpassed that of the next nine largest militaries combined. So why the concern about China's growing military strength? One reason for the heightened concern is the presence among China's military elites of a staunchly nationalistic and aggressive segment that advocates confrontation with the United States through a doctrine called URW.

The U.S. rebalancing toward the Asia-Pacific region will bring its military face to face with URW, the asymmetric warfare strategy advocated by certain elements within the Chinese military establishment. The lack of transparency regarding the respective interests and objectives of China's civilian government and its military lies behind the American concern over its military buildup. In particular, open expression of support by Chinese military officers to the strategy of URW is a policy driver in the relations between the two countries.

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### Defining Terms

Former USSOCOM Commander Admiral Eric Olson has indicated that URW is not a doctrinally defined term.<sup>36</sup> In 1999, Qiao Liang and Wang Xiangsui, two senior colonels of the People's Liberation Army (PLA), published a manuscript entitled *Chao Xian Zhan*, translated to *Unrestricted Warfare*, which provided a definition of the term and a manual for its use and application.<sup>37</sup> URW is defined by Liang and Xiangsui "as using all means, including armed force or non-armed force, military and non-military, and lethal and non-lethal means to compel the enemy to accept one's interests."<sup>38</sup>

Significantly, the events that compelled the writing of the manual were their participation in the 1995-96 Taiwan Strait crisis and the U.S. dominant performance during the Gulf War, which they underscore as the “one war that changed the world.”<sup>39</sup> A translator’s note indicates that in a subsequent interview Qiao Liang summarized the book’s core theme as “the first rule of unrestricted warfare is that there are no rules, with nothing forbidden.”<sup>40</sup> The significance of the concept is that in the case of terrorism, for example, “national forces must always conduct themselves in according to certain rules and therefore are only able to use their unlimited resources to fight a limited war.”<sup>41</sup>

Some Americans do not consider URW as a new type of war; however, pointing out that in 1962 President John F. Kennedy had adroitly addressed it in a graduation speech at West Point:

This is another type of war, new in its intensity, ancient in its origins—war by guerrillas, subversives, insurgents, assassins; wars by ambush instead of by combat; by infiltration instead of aggression, seeking victory by eroding and exhausting the enemy instead of engaging him … it requires in those situations where we must encounter it … a whole new kind of strategy, a wholly different kind of force, and therefore a new and wholly different kind of military training.<sup>42</sup>

Yet, the URW book raised concerns throughout the United States and Europe after it became known that the authors had both predicted the World Trade Center terror attacks and made reference to Osama bin Laden before 11 September 2001. The work noted that the Strategic Institute of the U.S. Army War College had discovered the “frequency bandwidth” or blind spot problem in the new military revolution. It was “the gap between the American military in terms of military thought and the real threat facing national security” and “Whether it be the intrusion of hackers, a major explosion at the World Trade Center, or a bombing attack by bin Laden, all of these greatly exceed the frequency bandwidths understood by the American military.”<sup>43</sup> In particular, they had noted that “The advent of bin-Laden style terrorism has deepened the impression that a national force, no matter how powerful, will find it difficult to gain the upper hand in a game that has no rules.”<sup>44</sup>

During the Iraq War, in order to defeat the insurgency, General Stanley McChrystal transformed the special operations approach to the enemy. As he put it, “it became clear to me and to many others that to defeat a networked enemy we had to become a network ourselves.”<sup>45</sup> The two authors of *Unrestricted Warfare* had predicted in 1999 that if such a move were to be made it was bound to fail—“Even if a country turns itself into a terrorist element, as the Americans are now in the process of doing, it will not be able to achieve success.”<sup>46</sup> The United States command under General McChrystal did not turn itself into a terrorist element but rather it sought to address the bandwidth issue. It was successfully accomplished through the introduction of a process fusing the intelligence and operations functions. A version of the process is described as “find, fix, finish, exploit, analyze, and disseminate,” or F3EAD.<sup>47</sup> Nonetheless, since the 9/11 attacks have been identified by the National Commission on Terrorist Attacks as a bandwidth problem, an “intelligence failure” showing a “failure of imagination,” the Chinese colonels’ predictions about bin Laden’s behavior and their understanding of the U.S. military’s constraints seemed very prescient.<sup>48</sup>

The URW book triggered a gamut of U.S. studies, workshops, seminars,<sup>49</sup> and war games. A notably controversial example of the latter was the Millennium Challenge 2002 (MC02), a reported DOD \$250 million exercise conducted in July-August 2002. It was the largest military exercise in history, planned over two years, involving 13,500 personnel from the Army, Navy, Air Force, and Marines and designed to test naval and aerial combat theories in a simulated battle between the United States (Blue Team) and a fictitious adversary in the Persian Gulf (Red Team).<sup>50</sup> The controversy surrounding the exercise developed following statements made in 2008 by the initial Red Team commander, retired Marine Lieutenant General Paul Van Riper, who claimed that during the exercise he had sunk 16 American ships, including an aircraft carrier and most of its strike group, by applying asymmetrical tactics like swarming the Navy ships with small boats and missiles. If his statement, “The sheer numbers involved overloaded their ability, both mentally and electronically, to handle the attack” is true, then it was another instance of the “bandwidth gap” and it might be very relevant to the current challenges presented by Iran’s threat to close the Strait of Hormuz.<sup>51</sup>

China is not the only country interested in URW; North Korea and Iran have been adopting some of its principles in their regional strategies. On April 2010, for instance, while diplomatically continuing to resist more intrusive

International Atomic Energy Administration (IAEA) supervision of its nuclear facilities, the Iranian government announced that the Islamic Revolutionary Guard Corps had the “Great Prophet V” exercise using “ultrafast” watercraft in a 300 boat swarming attack.<sup>52</sup> These asymmetric warfare exercises were followed by the 24 December 2011, Velayat-90 naval drills covering a 2,000 kilometer stretch of sea around the Strait of Hormuz from the Persian Gulf to the Arabian Sea. (Figure 2). The Strait of Hormuz is one of the world’s most important chokepoints through which half of the world’s oil passes. The purpose of the 10-day exercise was to taunt the U.S. Navy and convey the message that in these narrow passages and coastal waters the Iranians would raise the cost to U.S. naval forces by subjecting them to destructive attacks and other asymmetric tactics similar to those used by General Van Riper in the MC02 simulation.<sup>53</sup>

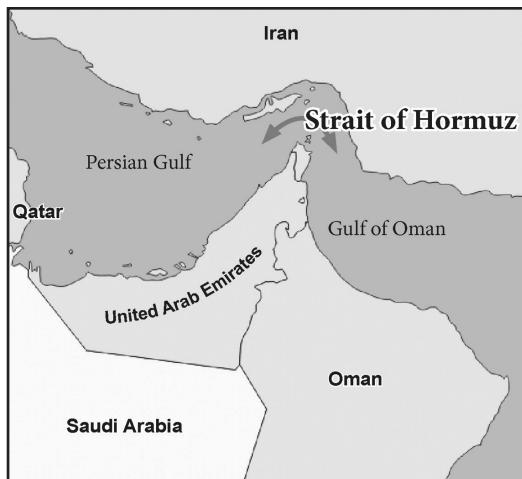


Figure 2. Strait of Hormuz and surrounding areas.

As the most recent DOD annual report to Congress on China’s military shows, the Chinese official military budget reached \$106 billion in 2012, an 11.2 percent increase, and China would soon commission its first Kuznetsov-class aircraft carrier. The real total spending is estimated around \$120 billion and \$180 billion as the PLA transforms its air force and navy into forces capable of offshore offensive and defensive operations.<sup>54</sup> The relevance of the concept of URW in the case of China is based on the assumption that as China rapidly increases its conventional capabilities to approach those of URW itself is neither new or original for its long genealogy can be traced back both to Sun Tzu’s the Art of War and B.H. Liddell Hart concept of “grand strategy.”<sup>55</sup> While Tzu and Clausewitz addressed the theory and practice of war in general, however, the Chinese manual is specifically directed at the United States. The practice of URW relies on deception and surprise in the unrestricted use of means and methods to achieve goals

and objectives. In the book, the authors focus on the “American-style extravagant warfare,” while displaying familiarity with American military history, organization, culture, and methods, and a keen interest on analyzing our idiosyncratic vulnerabilities. Their interpretation of the American way of war, as exemplified by Operation Desert Storm, forms the basis for their theory and perceptual screen. In their view, the United States engages in “large-scale use of costly weapons in order to realize objectives and reduce casualties without counting cost—this kind of warfare, which can only be waged by men of wealth is a game that the American military is good at ... has already become an addiction.”<sup>56</sup> To them the American way of war is comparable to “attacking birds with golden bullets.”<sup>57</sup> Moreover, “this is a nationality that has never been willing to pay the price of life and, moreover, has always vied for victory at all costs.”<sup>58</sup> Their advice is that “All of the opponents who have engaged in battle with the American military have probably mastered the secret of success—if you have no way of defeating this force, you should kill its rank and file soldiers.”<sup>59</sup> The main allegation being that when the U.S. goes to war it is casualty averse since “reducing casualties is the highest objective in formulating the plan” and “there must be victory without casualties.” Casualty aversion is an American vulnerability to be exploited.<sup>60</sup>

In reaching that conclusion the authors apparently were influenced by the work of Russell Weigley who argued that the American way of war since WWII was characterized by the application of overwhelming force against its enemies and avoidance of excessive casualties.<sup>61</sup> A non-military, sociological interpretation of casualty aversion, however, is provided by Luttwak who claims that “advanced societies whose small families lack expendable children have a very low tolerance for casualties.”<sup>62</sup> To support their argument that the U.S. is casualty averse the Chinese colonels point out, “During the Gulf War, of 500,000 troops, there were only 148 fatalities and 458 wounded. Goals that they long since only dreamt were almost realized—no casualties.”<sup>63</sup> In truth, American warfighters are not afraid of suffering casualties per se and have long engaged in close quarters fighting continuing to do so through the recent Iraq and Afghanistan wars. They have sought to maximize enemy casualties while minimizing friendly casualties because we have precise, highly lethal weapons systems and a highly trained volunteer force recruited in a representative democracy where every individual life is valuable and popular support for war is needed.

After a decade of war in Iraq and Afghanistan with increasing casualty levels the American people have remained as proud and supportive of its military as ever. Public opinion studies, in fact, have shown that the American public is not casualty averse but is keenly aware of the ends-and-means aspects of military intervention taking their cue from military leaders and policymakers. The myth of risk aversion results from a misinterpretation by the national security leaders who mistakenly believe that the public is risk averse and will not support use of force except when vital interests are at stake.<sup>64</sup> More important than the myth of casualty rates is the relationship between fiscal reality and the way Americans have waged war. With the federal debt at 100 percent of GDP and trillion dollar deficits, the profligate tactical approach to warfare where, for instance, expensive missiles are launched against single individual terrorists (“attacking birds with golden bullets”) needs reconsideration. Since the days of George Washington responsible leaders have known that our economic power is the cornerstone of military power, and there is a need for a national strategy establishing a rational relationship of ends and means for the appropriate exercise of military power in an era of financial austerity.<sup>65</sup>

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### Taiwan 1995-1996 Missile Crisis

The Chinese colonels’ emphasis on U.S. concern with casualties seeks to highlight the differences in strategic culture between the U.S. and China. An example of the strategic cultural divide appeared during the 1995-1996 Taiwan missile crisis. To intimidate Taiwan, prevent a March 1996 election, and press for “reunification,” on 21-26 July 1995—after giving advance notice—China fired six short range missiles to an area within 40 kilometers of Taipei. (Figure 3). The effect was immediate as Taiwan’s stock market fell by 33 percent and the air and sea lanes around the island were closed to traffic. As part of the operation, China deployed short-range ballistic missiles opposite

Taiwan and announced in public that it had stolen the design for the neutron bomb from the United States and successfully tested a device in 1984.<sup>66</sup> Chinese General Xiong Guangkai, then Assistant Chief of the General Staff of the PLA at the time of the crisis and later chief of military intelligence, created an uproar when he publicly said to Assistant Secretary of

Defense Chas Freeman that the U.S. “cares more about Los Angeles than they care about Taipei.”<sup>67</sup> At a time when China was a weak second-rate power the officer believed that the U.S. would stand by if China were to attack Taiwan because China had the ability to annihilate Los Angeles and was willing to absorb millions of casualties in case of a nuclear exchange. It was an instance of Chinese “management of perception” tactics that was widely and erroneously reported as a direct threat to attack Los Angeles with nuclear weapons. Nonetheless, it remains generally true that democratic societies like the U.S. do seek to avoid unnecessary casualties while in authoritarian countries the rulers don’t seem to care as much about them. During the Cold War, the Soviet Union reportedly was considering a pre-emptive strike against China’s nuclear program.<sup>68</sup>

During the Vietnam War, differences in strategic culture were overlooked as the U.S. adopted the Robert McNamara metric for war-winning, namely, counting and comparing the number of casualties we inflicted on the Viet Cong and the North Vietnamese. The infamous body counts were a clear example of mirror imaging that fully exhibited the limitations of the “garbage-in, garbage-out” problems of system analysis, as well as a reflection of the technocratic mind at work. In McNamara’s words,

The body count was a measurement of the adversary’s manpower losses; we undertook it because one of Westy’s [General Westmoreland’s] objectives was to reach a so-called crossover point, at which Vietcong



Figure 3. Taiwan Strait.

[sic] and North Vietnamese casualties would be greater than they could sustain ... We were wrong. Indeed, the crossover point never arrived because the enemy did not think like us.<sup>69</sup>

During the 1995-96 Taiwan missile crisis the U.S. sought to show strong resolve by sending the USS Nimitz aircraft carrier and its battle group through the unusual route of the Taiwan Straits in December 1995, but it did not stop China from scheduling large-scale military maneuvers in February-March 1996.<sup>70</sup> Then, on 8 March 1996, China fired three ballistic missiles—one over Taipei and two near port cities. The failure to deter China from its coercive activities against Taiwan prompted then Secretary of Defense William Perry, first, to warn a visiting Chinese military official of “grave consequences” should any missiles hit Taiwan and soon thereafter to send two aircraft carrier battle groups to the Taiwan area in the largest U.S. naval deployment to Asia since the war in Vietnam. While Chinese Premier Li Peng warned the U.S. not to make a show of force by sending the Navy again through the Taiwan Strait, Secretary Perry responded by boasting that “Beijing should know, and this U.S. fleet will remind them, that while they are a great military power, the strongest, the premier military power in the Pacific, is the United States.” The fleet did not enter the strait, however.<sup>71</sup>

### **URW: Lessons Learned and Different Thinking**

The main strategic assumption of Chinese URW is that the United States is currently unmatched in conventional weapons and cannot be defeated through direct confrontation. But it can be defeated indirectly through what the authors call the “principle of addition” which is the method of combination.<sup>71</sup> An adversary does not have to match U.S. power one to one since the principle operates as a holistic approach based on a process of combining resources and capabilities at all levels and across all dimensions. In addition to or in lieu of military force, combat would take place with electronic, diplomatic, cyber, terrorist, proxy, economic, political, and propaganda tools to overload, deceive, and exhaust the U.S. “system of systems.” The principle of addition works together with the side-principal rule, the golden rule that is the dominant strategy of “evading enemy frontal attacks and weakening the enemy momentum.”<sup>72</sup> An example of the application of the side-principal rule and the American bandwidth gap is the Japanese attack on Pearl Harbor where the Americans refused to believe that

Hawaii would be the point of attack even after receiving intelligence before the operation. Japanese Admiral Yamamoto “won a victory with surprising moves by hitting side targets.”<sup>74</sup>

Mind games lie at the core of URW since it integrates non-war and war actions and transcends all boundaries and limits. URW is not synonymous with hybrid warfare, unconventional warfare, insurgency, guerrilla war, or any of the concepts bandied about. It is in fact a holistic meta-concept comprising the totality of life—“all the means will be in readiness, the information will be omnipresent, and the battlefield will be everywhere. ... All boundaries lying between the two worlds of war and non-war, of military and non-military, will be totally destroyed.”<sup>75</sup> That is why new thinking is needed regarding war and weapons, too, because in the 21st century anything can be a weapon—from a computer virus to a rumor or scandal. As the URW colonels put it, the new concept of weapons will cause ordinary people and military men alike to be greatly astonished at the fact that commonplace things that are close to them can also become weapons with which to engage in war. We believe that some morning people will awake to discover with surprise that quite a few gentle and kind things have begun to have offensive and lethal characteristics.<sup>76</sup>

Whether we like it or not, whether we accept or reject it, it is a widely accepted notion among our adversaries that they are engaged in a total war with us. There was a time when the Vietnam War was described in the West as a limited war. But for the Viet Cong and North Vietnamese bombed by our B-52s the war was anything but limited; for them it was probably total. This is useful in understanding the contemporary practice of suicide bombing by violent extremists. Whether they volunteer, are coerced, or radicalized through the Internet, the fact remains that they are difficult to deter, effective weapons to kill people and sow fear. The suicide bomber is engaged in a total war to the point of self-destruction. Unlike the South Vietnamese or Tibetan Buddhist monk who acting alone sets himself on fire to immolate for a cause, the suicide bomber’s religious beliefs direct the focus of destruction on the dehumanized ‘other’ (target/victims). Suicide bombing is martyrdom in Islamist jihad and operationally it is the result of a combination of human (bomb maker, bomber, handlers, and trigger-puller who might detonate from afar) and non-human elements (the device) seeking to destroy the ‘other’ for his own salvation. State and non-state actors using a URW strategy can hide their hand through combinations of increasing opaqueness.

In his book *On China*, Henry Kissinger states that the Chinese are shrewd practitioners of Realpolitik or political realism and follow a different strategy than the West.<sup>77</sup> The differences are reflected in the intellectual games favored by each civilization. Following David Lai's study that uses the ancient game of Weiqi (Go) as a metaphor for the Chinese approach to strategy, Kissinger argues that while the United States and the West approach great power politics as a game of chess where the purpose of the game is checkmate or total victory, the Chinese play Weiqi.<sup>78</sup> Weiqi has been around for centuries and it is a popular game in China where the opponent is defeated by limiting his movement options. The chess player aims for total victory. The Weiqi player seeks relative advantage. In chess, the player always has the capability of the adversary in front of him; all the pieces are fully deployed. The Weiqi player needs to assess not only the pieces on the board but the reinforcements the adversary is in a position to deploy. Chess teaches the Clausewitzian concepts of "center of gravity" and the "decisive point"—the game usually beginning as a struggle for the center of the board, Weiqi teaches the art of strategic encirclement.<sup>79</sup>

Kissinger also sees differences in military theory where Chinese strategic thinkers follow the tradition of Sun Tzu's *The Art of War* and his emphasis on the psychological and political rather than just the military dimension. In a belated self-reproaching statement Kissinger notes, "One could argue that the disregard of his [Sun Tzu] precepts was responsible for America's frustration in its Asian wars."<sup>80</sup> Our continued disregard is obviated when U.S. policymakers travel to Beijing to inquire about the reasons behind their military buildup demanding more transparency and less opaqueness, for in doing so we are engaged in chess playing. To the Chinese and Iranians playing Weiqi it must appear naïve to be asked to show all the pieces in a game they are not playing. We live in a democracy where the demand for, and expectation of, transparency is our modus vivendi. Our government, media, think tanks, and oversight committees are a constant source of valuable information about all aspects of our country's life. Leaked or stolen classified and confidential military, technological, and scientific information is allegedly posted on the Internet. Sources and methods as well as the identity of our operators and their units have been imprudently disclosed to the public to score political points. Legally, under the Freedom of Information Act hitherto sensitive material is obtainable by friend and foe alike. But no amount of military-to-military relations pleading will bring

about the transparency that we seek from adversaries and competitors. They play by other rules or by none. Why should we expect them to give their game away?

In his 2005 “Future War Paper” Van Messel dismisses the *Unrestricted Warfare* text because the authors do not provide specifics on “how to do it.”<sup>81</sup> But why should they make it easier to countermeasure? We want transparency because we give it all away with our own transparency. They do not feel obligated to play by our rules (transparency v. opaqueness) since after all they are proponents or practitioners of war without rules. Van Messel also claims that since URW is almost similar to Clausewitzian total war China would be constrained by increased globalization in its use of indiscriminate acts of warfare. But globalization has not constrained the militant jihadists and radical extremists in their indiscriminate suicide bombing behavior, or the nation-states that provide them sanctuary. Globalization per se would not be a deterrent to a state actor engaged in an opaque URW combination with state and non-state actors.

### **Means and Methods of URW**

For the authors of *Unrestricted Warfare*, territorial boundaries, lines of demarcation, tripwires, battlefields, sovereign spaces, and the like are no longer as relevant in the conduct of 21st century warfare. The reason is that there is no “non-battlespace” because virtually every space has battlefield significance—“All that is needed is the ability to launch an attack in a certain place, using certain means, in order to achieve certain goals.”<sup>82</sup> Likewise, the soldier of the future is more likely to be “a pasty-faced scholar wearing thick glasses” than a strong and brave lowbrow with bulging biceps.<sup>83</sup> In a digitized world, as Mao Zedong theorized, every citizen can in fact be a soldier. For example, a computer hacker without military training or status could “easily impair the security of an army or a nation in a major way by simply relying on his personal technical expertise.”<sup>84</sup> As a result, the battlefield of the future is omnipresent; it is everywhere.<sup>85</sup>

In an omnipresent battlefield how does one fight? After identifying and analyzing the four forms that future wars would take according to the United States—information warfare, precision warfare, joint operations, and military operations other than war (MOOTW)—they recognize that except for joint operations the other three forms of war fighting are the product of “new military thinking.”<sup>86</sup> However, none is able to capture the true nature

of URW which is the concept of “non-military war operations.” While the U.S. focuses on MOOTW as a sort of residual category for “missions and operations by armed forces that are carried out when there is no state of war,”<sup>87</sup> URW as a meta-concept of grand strategy establishes what “constitutes a state of war” itself. The unconventional means of URW include those that seem totally unrelated to war. Fifteen types of non-military warfare domains or lines of operation and their defining means and methods are listed by the authors of *Unrestricted Warfare* with the caveat that there are others too numerous to mention:<sup>88</sup>

1. **Trade warfare:** using trade measures such as embargoes, domestic trade law, tariff barriers, most-favored nation status, et cetera.
2. **Financial warfare:** a hyperstrategic weapon because it is concealed and highly destructive by relying on currency, banking, and stock market manipulation, use of foundations.
3. **New terror warfare:** terrorism using high technologies and weapons of mass destruction against humanity as a whole.
4. **Ecological warfare:** employing modern technology to influence the natural state of rivers, oceans, the crust of the earth, the polar ice sheets, the air circulating in the atmosphere, and the ozone layer.
5. **Psychological warfare:** perception management of strength and capabilities to intimidate and breakdown the will of the enemy.
6. **Smuggling warfare:** throwing markets into confusion with illegal goods and counterfeit products.
7. **Media warfare:** media manipulation to influence opinions, attitudes, and images; intimidation of journalists and media outlets.
8. **Drug warfare:** profiteering from illicit drug sales used to destabilize and weaken other countries.
9. **Network warfare:** conducting non-attributable cyber attacks.
10. **Technological warfare:** monopolizing critical nodes.
11. **Fabrication warfare:** deception, lying, and perception and narrative management to conceal one’s true weakness and project false strength.
12. **Resources warfare:** plundering the stores of natural resources by controlling access to them by other countries.
13. **Economic aid warfare:** providing aid to control and create dependency.
14. **Cultural warfare:** influencing and shaping foreign cultures, values, and practices into accepting, absorbing, and integrating your own; leading

cultural trends so yours will be adopted.

15. **International law warfare:** controlling the legal and regulatory environment; using the judicial system to advance your own agenda and defeat your adversary.

The authors predict that any future war would lead to the use of what has been labeled a “Beijing cocktail,” a mixture of the above non-military means with the use of force. In such a war, the goal should be “to use all means whatsoever—means that involve the force of arms and means that do not involve the force of arms, means that involve military power and means that do not involve military power, means that entail casualties and means that do not entail casualties—to force the enemy to serve one’s own interests.”<sup>89</sup> The strategy seeks to achieve the proper combination of means and methods by using “ten thousand methods combined as one: combinations that transcend boundaries.”<sup>90</sup>

### 3. The Role and Functions of Combinations

To achieve victory, the URW strategist must learn to combine means and methods using a Machiavellian approach of going beyond limits by transcending ideology. The masters of warfare like Alexander the Great and the kings of the Zhou Dynasty were great cocktail mixers who combined weapons, means, battle arrays, and stratagems. Unlike the 21st century master, however, their combinations were limited to the military domain. The new method of warfare is called “modified combined war that goes beyond limits.”<sup>91</sup> It does not mean that there are no limits but rather that one goes beyond the box to achieve a particular objective. Modified combined war has four expressions: supra-national, supra-domain, supra-means, and supra-tier combinations.

A supra-national combination is the most powerful that a country can use and has been the trend since the Gulf War. It is a cocktail combination of national, international, transnational, and non-state organizations that is used to solve problems and achieve objectives. One example would be the European Union (EU) and its adoption of the euro as a common currency to achieve unity. The current crisis in the Eurozone with the almost bankrupt economies of Portugal, Italy, Greece, and Spain threatens the 27-member EU with disunity as the value of the euro as a common currency is in jeopardy. To reset the group, Germany and France, the economically strongest European countries, must succeed in cooperating in sustaining restabilization policies. One issue in the Franco-German relationship, however, is that French Socialist President Francois Hollander was elected on a political platform of opposition to the German Chancellor Angela Merkel’s austerity and euro stabilization program. The ability of the leaders of those two countries to protect the Eurozone will have global consequences beyond the EU’s own stability by forcing domestic changes in the weak European states or hastening departures from the EU at a time when the U.S. is reducing its NATO involvement as it pivots to Asia.<sup>92</sup>

The United States has used supranational combinations very successfully to advance its interests and the authors underscore it by noting the success of the coalition of the willing organized by President George H.W. Bush to fight the Gulf War. China, for its part, is moving to combine supra-nationally, too, as shown by its involvement in the Association of South East Asian Nations (ASEAN) and particularly the Shanghai Cooperation Organization

(SCO). The Shanghai Five was founded in 1996 by members China, Russia, Kazakhstan, Kyrgyzstan, and Tajikistan to resolve border disputes between China and the former Soviet Union by demilitarizing their borders. With the addition of Uzbekistan the organization was renamed SCO and has expanded its activities into the areas of military cooperation, intelligence sharing, and counterterrorism training exercises. Its six members occupy 60 percent of the landmass of Eurasia and one third of the world population. Several countries including Iran, India, and Pakistan have observer status. The SCO has called for the U.S. to set a timeline to withdraw its military from Central Asia, and it believed that despite bilateral frictions between China and Russia it is being used as a supranational mutual security combination to counter NATO and oppose an American presence in the strategic Central Asia.<sup>93</sup>

The second type of combination is the supra-domain where, for example, trade warfare, media warfare, cyber warfare, and cultural warfare constitute the domains. The supra-domain is beyond the domain of the battlefield because it combines across nonmilitary and military domains to achieve its objectives. The Western powers and Israel suspect that despite its denials Iran has been seeking an atomic weapons capability under the cover of a civilian and space program. The U.S. and its allies have thus far deferred overt military domain operations by focusing mostly on nonmilitary operations. Economic sanctions (e.g. oil embargo, no sales of airplane spare parts), financial pressure (e.g. freezing assets), weapons inspections by the IAEA, diplomacy, media campaigns, and so forth are being combined in the 21st century equivalent of warfare to compel Iran to change direction. In this bloodless conflict the outcome might be decided by political, economic, diplomatic, cultural, technological, and other nonmilitary factors in a supra-domain combined operation.<sup>94</sup>

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*The supra-domain is beyond the domain of the battlefield because it combines across non-military and military domains to achieve its objectives.*

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A still unclear aspect of the confrontation is the role of covert operations in the combination against Iran such as the assassination of nuclear scientists and the cyber worm attacks. On 15 May 2012, Iran's official IRNA news agency reported the execution of Majid Jamali Fashi, a man convicted as an Israeli spy responsible for the 2010 assassination of nuclear scientist Masoud Ali Mohammad, a particle physics professor at Teheran University.<sup>95</sup> The

Islamic Republic of Iran has blamed Israel and the United States for the killing of four nuclear experts including the more recent killing in London of Mostafa Ahmadi Roshan on 11 January 2012. The U.S. has condemned the attacks and denied responsibility.<sup>96</sup>

In late 2009 and early 2010 a cyber weapon attack is said to have destroyed as many as 1,000 Iranian nuclear-fuel centrifuges or more than one-tenth of the 8,692 installed centrifuges at the Natanz uranium enrichment plant.<sup>97</sup> According to computer antivirus firm Symantec, a computer malware named “Stuxnet worm” by security experts targeted industrial control systems of a critical array of centrifuges with certain specific brands of frequency converters—a piece of equipment that governs centrifuge motors and controls a centrifuge’s rotational speed. The failure of the centrifuges would be a major setback to the Iranian nuclear program. Iran by 2011 replaced the centrifuges increasing the number of operating centrifuges to about 4,800. However, on 1 September 2011 the Duqu or “Son of Stuxnet” virus, a computer worm related to the Stuxnet but with data stealing capabilities useful in attacking industrial control systems, was discovered in Iran’s nuclear sites. While the Stuxnet virus destroyed the systems it infected, the Duqu secretly penetrated them, and created vulnerabilities for future exploitation.<sup>98</sup> The attribution issue is significant since it is officially unknown who unleashed the Stuxnet and the Duqu cyber weapons to undermine the Iranian program. The list of suspects ranged from Israel to China, Russia, and the United States. According to a RAND Corporation report the U.S. and Israel allegedly created the virus for two purposes—to deter Iran from developing nuclear weapons and to keep Israel from launching a preventive military strike—and “in the end, a pair of first-rate cyber powers carried out cyber sabotage against a facility belonging to a third-rate industrial culture causing more than a hiccup in the production of enriched uranium.”<sup>99</sup> It has been noted that if it could be officially attributed to the U.S. “countries hostile to the United States may feel justified in launching their own attacks against U.S. facilities perhaps even using a modified Stuxnet code.”<sup>100</sup>

The Stuxnet attack was indeed a harbinger of emerging warfare capabilities in the cyber space domain because on 30 March 2012 a group calling itself “Anonymous China” stood up a twitter account and began to deface Chinese government websites. In May 2012, after a new series of attacks, the Iranian Computer Emergency Response Team announced the discovery of another more complex virus named “Flame” This last discovered cyber weapon

was capable of “password and data stealing, sniffing network traffic, taking screenshots, recording audio conversations, intercepting the keyboard, and so on.”<sup>101</sup>

Harvard professor Gary King and his co-researchers Jennifer Pan and Margaret Roberts conducted a large scale, multiple-source analysis using a system devised to locate, download, and analyze the content of millions of social media posts originating from nearly 1,400 different social media services all over China before the Chinese government could remove them from the Internet in order to study censorship by the PRC. China with over 550 million Internet users—38 percent of the population—is engaged in, according to King, “the largest effort to censor human expression in history.” It is a “huge manual effort” involving hundreds of thousands of people. Surprisingly, they discovered that the Chinese censorship program rather than stopping access to the Internet, or censoring criticism of the state and its policies, seeks to prevent, curtail, and eliminate collective action by “silencing comments that represent, reinforce, or spur social mobilization, regardless of content.”<sup>102</sup> The Chinese government like other authoritarian regimes in Russia, Venezuela, Cuba, and Myanmar rather than ignoring the demands of the population, a mistake that triggered media and cyber combinations during the Arab uprisings, have learned to control popular opinion by creating a “controlled space” for freedom of speech, dissent, and open commerce.<sup>103</sup>

The third combination in URW is the supra-means combination where all means available—military and non-military, lethal or non-lethal—are used in operations. Means are relative and complex because their use depends on the level. What is a means at one level might be an objective at another level. For example, a non-state actor like the mafia or a transnational criminal organization may combine assassination, kidnapping for ransom, and illegal drug trade in order to get rich while a nation-state providing sanctuary may allow it to operate as a means to the objective of destabilizing a neighbor country. In choosing means to combine the guiding principle is the question, is it “the best way to achieve the desired objective?”<sup>104</sup> Max Manwaring has listed examples of combinations that have been used around the world by practitioners of URW: Conventional war/cyber war/media war (e.g., Georgia, 2008); Surrogate or proxy war/intelligence war/psychological war (e.g., Lebanon, 2006); Narco-criminal war/financial/war/psychological war (e.g. Mexico, to date); Diplomatic war/media war/conventional war (e.g.

Algeria, 1954-62); and Guerrilla war/psychological war/narco-criminal war (e.g. Peru, to date).<sup>105</sup>

The fourth kind of combination is the supra-tier combination that combines all levels of conflict into each campaign. This type of combination seeks to break through all stages of a campaign by linking and reassembling actions. The *Unrestricted Warfare* authors believe that four levels are sufficient for combining based on their respective functions. The first level is grand war comprising military and nonmilitary actions from the supranational level to the national level. At this level the main function is to establish a war policy or grand strategy. The second level is war strategy or national-level military and nonmilitary actions where the main function is strategy or stratagems of war. At the third level one is engaged in operational art combining combat actions lower than war but higher than battles. Finally, at the fourth level one is engaged in battles where the function is tactical actions. An example of a combination at the supra-tier would be the act of terror by Osama bin Laden on 9/11. Those attacks combined tactical and operational level actions like recruiting, financing, hiding, and transporting terrorists through Europe to the U.S. in order to link up with terrorist sleeping cells, as well as sending terrorists to flying schools to learn how to steer airplanes to their targets. The overall operation was meticulously planned to inflict maximum damage and achieved strategic objectives by destroying or damaging major symbols of American power, threatening national security, and fomenting fear among the population. It was an example of what “goes beyond limits thinking.”

To summarize, the importance of combinations of military and non-military elements in the theory and practice of URW is derived from the conclusion that no matter when a war took place, all victories or failures have one common denominator, namely, the winner is the best organized to implement a multidimensional combination. Nonetheless, in a combination-prone strategic environment one must not ignore the power

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that can be exercised by one single actor or lone wolf in today's digitally connected world as the Robin Sage caper reminds us. On 18 July 2010 the *Washington Times* reported about Robin Sage, the "Mata Hari" of cyberspace who according to her profile on Facebook and other social-networking websites was an attractive, flirtatious 25-year-old woman working as a "cyber threat analyst" at the U.S. Navy's Network Warfare Command. Within a few weeks she was able to establish nearly 300 social-network connections with security specialists, military personnel, and staff at intelligence agencies, and defense contractors. Her connections ranged from men working for the nation's most senior military officer, to the National Reconnaissance Office, one of the most secret government agencies. She gained access to e-mail and bank accounts and learned about secret military units. But Robin Sage did not exist; she was a fictional cyber analyst created in December 2009 by Thomas Ryan, a security specialist and hacker from New York who took her name from a training exercise of the U.S. Army Special Forces and created several accounts in Twitter, Facebook, LinkedIn and other social media networks. His purpose was to conduct a short Red Team experiment that proved how people entrusted with sensitive information would be willing to share it with third parties through social networks. His conclusion was that terrorists using a similar approach could obtain valuable information affecting our national security.<sup>106</sup>

### **Anti-Access/Area Denial Combinations in Asia and the Middle East**

Will rebalancing our "pivot" to the Asia-Pacific help deter China, North Korea, violent extremists, prospective adversaries, or emerging challengers from future war and conflict escalation? Former Defense Secretary Robert M. Gates said in 2011 that if it continues on its current path, North Korea could be a "direct threat" to the United States in five years or less.<sup>107</sup> For years, the North Korean government has defied the international community. It has challenged and taunted the United States and its allies South Korea and Japan with a combination of asymmetric actions and provocations ranging from cyber attacks, kidnappings of foreign citizens, attacks on fishing vessels in international waters, and currency counterfeiting to nuclear proliferation, long-range missile launches, and threats of nuclear war. In particular, North Korea has continued to seek a nuclear capacity to deliver long-range nuclear weapons to the United States.<sup>108</sup>

It has been reported that according to a North Korean defense white paper,

North Korea's special forces had "grown by 20,000 reaching about 200,000 in total and increasing the so-called asymmetric threat the country poses to the South." In addition, the North has:

... consistently boosted its special warfare capabilities, deploying a light infantry division under an Army corps stationed on the frontline and adding a light infantry regiment to an Army division there. ... The number of North Korean special forces, the world's largest, was 120,000 in the 2006 defense white paper and about 180,000 in the 2008 white paper. By 2010, they accounted for 17 percent of the North's 1.19 million soldiers—1.02 million in the Army, 60,000 in the Navy and 110,000 in the Air Force.<sup>109</sup>

How does North Korea intend to use them and against whom? The special troops are primed to carry out combined operations such as attacks on major facilities in South Korea, assassination of very important persons by the special combat group known as the "Storm Corps," infiltrating the South using underground tunnels, and AN-2 aircraft capable of low-altitude infiltration.<sup>110</sup> Following the logic of URW they could also be used as proxy forces in a nation-state and/or non-state combination against the U.S. and Japan.

In response to North Korea's erratic behavior the U.S. has relied on a combination of incentives and disincentives engaging them diplomatically, providing food and oil supplies in exchange for restraint, more transparency about its nuclear program, and cooperation with nuclear inspectors of the IAEA. Since North Korea is highly dependent on China for cash flows and subsidies the U.S. has prompted China to get more involved bilaterally and through the Six Party Talks (i.e. North Korea, China, Russian Federation, South Korea, Japan, and the United States) in changing the North Korean government's behavior. At the same time the U.S. continues to support and strengthen its key allies South Korea and Japan by maintaining, among other things, close political and military cooperation with sufficient American bases and troops, joint exercises, and expanding trade and commerce. Moreover, the U.S. has pushed the two countries into bilateral cooperation culminating in an unprecedented set of symbolic military agreements to share military intelligence and mutually serving in UN peacekeeping and humanitarian missions.<sup>111</sup>

In dealing with North Korea, however, the U.S. must also take into account that both countries have divergent interests in the Korean Peninsula and the PRC's current and long-term strategic objectives. As the DOD annual report to Congress puts it:

The People's Republic of China (PRC) is pursuing a long term, comprehensive military modernization program designed to improve the capacity of China's armed forces to fight and win "local war under conditions of informatization," or high intensity information-centric regional operations of short duration.<sup>112</sup>

What is the most likely "local war" in which China might become involved? The DOD's answer is clearly reflected in the analysis of the PRC's strategy to defeat Taiwan should Taiwanese leaders move toward independent status.<sup>113</sup>

At issue is the situation that "prospective adversaries are developing and fielding, or have ready access to, military capabilities that will place U.S. forces operating from large, fixed forward bases, and in the littoral regions, at increasing risk."<sup>114</sup> As a point of comparison, both Iran in the Persian Gulf and China in the Taiwan Strait and the South China Sea are respectively seeking to create "no-go" zones to thwart U.S. military power. The 2005 National Defense Strategy of the United States of America established as a key operational capability "projecting and sustaining forces in distant anti-access environments" but as former Defense Secretary Gates put it, while U.S. naval and air forces have been shrinking, countries in places where the United States has strategic interests have been building "sophisticated new technologies to deny our forces access to the global commons of sea, air, space,



Figure 4. China's island chain defense.

and cyberspace.”<sup>115</sup> The weapons being deployed by China are part of anti-access/area denial (A2/AD) strategies grouped in “assassin’s mace” defense strategies. The assassin’s mace is a combination of conventional military and network warfare dimensions with means such as air defenses, ballistic, and anti-ship missiles, minefields, submarines, and naval vessels together with anti-satellite and cyberwar weapons to put U.S. aircraft carrier groups, intelligence, surveillance, and reconnaissance, and command-and-control networks at risk. In addition, they are building a blue-water navy to project power eastward across the Pacific toward Alaska, Guam, Hawaii, and south into the South China Sea and the Indian Ocean.<sup>116</sup>

Anti-access strategies will be used to prevent U.S. forces from entering a theater of operations (e.g. Taiwan Strait, Persian Gulf) while area-denial strategies seek to prevent U.S. air, land, and sea joint operations in their defensive battlespace. In particular, A2/AD capabilities being developed by China seek to prevent U.S. power-projection within the island chains’ defense perimeters.<sup>117</sup>

According to a RAND study of Chinese doctrinal writings, in a future conflict with the United States, China could employ several types of anti-access strategies. These may include: pressuring such countries as Japan to limit or deny the United States the use of forward bases; striking or jamming information systems to delay the deployment of U.S. military forces or to deny the United States access to information on enemy whereabouts; disrupting U.S. logistics systems, thereby preventing the timely delivery of supplies and delaying the arrival of additional forces; attacking air bases and ports to prevent or disrupt the deployment of forces and materiel; or attacking naval assets such as aircraft carriers to limit the United States’ ability to launch aircraft from the sea.<sup>118</sup>

Iran’s A2/AD combination, in turn, is composed of coastal and inland missile batteries, ballistic missiles, mines, submarines, and missile boats together with non-state actors like Hezbollah. The Iranians’ drive to develop a nuclear capability seeks a winning combination to deter U.S. power projection in the Persian Gulf and achieve regional hegemony.<sup>119</sup>

The pivot to Asia-Pacific, while hedging-in-the-Persian Gulf strategy proposed by retired General Barno and his collaborators, is a geopolitical response to the fact that the “U.S. military’s ability to preserve military access to two key areas of vital interest, the western Pacific and the Persian Gulf, is being increasingly challenged.”<sup>120</sup> The U.S. military response to A2/

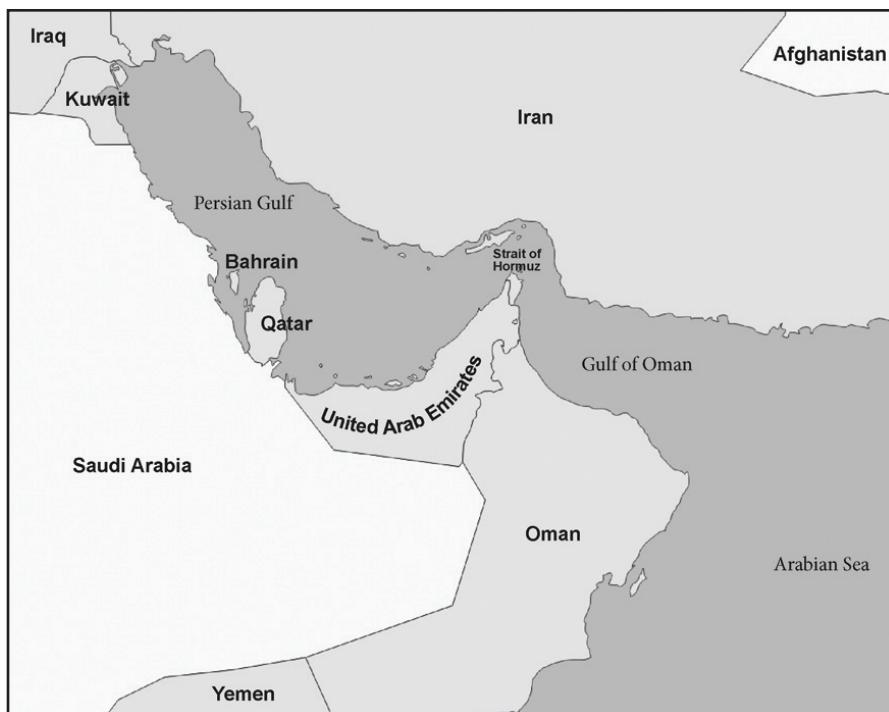


Figure 5. Iran and its Persian Gulf Arab neighbors.

AD strategies and China's military buildup is to prepare for the challenges to our power projection capabilities by relocating a number of U.S. forces stationed in Okinawa and South Korea to Guam, Hawaii, the Mariana Islands, and Australia—from the first island chain to the rear of the second island chain—under the Air-Sea Battle Concept (ASBC) described in the Department of Defense Joint Operational Access Concept of 17 January 2012. The main driver behind the development of ASBC is the proliferation of anti-access/area-denial capabilities. Accordingly, both in the Persian Gulf and in the Western Pacific the United States military seeks to sustain freedom of action by establishing networked and integrated air-sea forces to attack in depth. The naval strategy is one of fleet-in-dispersal where the dispersed force will be composed of self-contained joint elements that would be expected to disrupt, destroy, and defeat the command, control, communications, computers, intelligence, surveillance, and reconnaissance networks of an adversary; destroy their weapons-delivery platforms; and defeat incoming weapons and platforms.<sup>121</sup> Concerned that the United States

“does not understand China’s nuclear release decision process, Hammes argues for the need of an “offshore control” strategy rather than just a concept of operations and tactics like Air-Sea Battle.<sup>122</sup> While the public disclosure of the ASBC may reassure our friends and allies that the U.S. will continue to provide them with a security umbrella it is also likely that it has alerted our adversaries and they will continue to “modernize” their military to neutralize it.

The DOD 2012 Annual Report to Congress on China indicates that China’s current leaders are not likely to move in the direction of using force on Taiwan unless the Taiwanese leaders were to seek independence and also because the Chinese leaders view the current modernization of the PLA as “An essential component of their strategy to take advantage of what they perceive to be a ‘window of strategic opportunity’ to advance China’s national development during the first two decades of the 21st century.”<sup>123</sup>

The DOD annual report further notes that China needs to foster a positive external environment in order to gain the strategic space needed to focus on its economic growth and development. To do so during this period it seeks to avoid “direct confrontation with the United States and other countries.”<sup>124</sup> To maintain that strategic space, at the January 2011 summit China’s former President Hu Jintao committed to work together with President Barack Obama to build a cooperative partnership. China is therefore following a two-track approach combining a fast-moving military modernization program financed by double-digit economic development that they seek to sustain for the next decade. The DOD’s hope is that within that framework it can build a better military-to-military relationship that “is a part of shaping China’s choices.”<sup>125</sup> The operative words in this approach are “shaping China’s choices” to be a more cooperative and responsible major power in the management of the global commons. The question is why should a fast emerging and more powerful China allow itself to be “shaped” by its main competitor into its own status quo international order?

On the eve of former President Jintao’s January 2011 state visit to the United States the official Chinese Communist Party newspaper boasted that “China’s emergence is increasingly shifting to debate over how the world will treat China, which is the world No. 1 and has overtaken the U.S.”<sup>126</sup> This replicated the 2010 bold statements of senior PLA Colonel Liu Minfu, a professor at the elite National Defense University in his 303-page book entitled *The China Dream*, that China should “abandon modesty about

its global goals and sprint to become world No. 1. ... China's big goal in the 21st century is to become world No. 1, the top power.”<sup>127</sup> In the short term, to avoid a direct conflict with the U.S. it is in China's best interest to continue to selectively play by the rules of the global system established by the dominant power (chess playing). But in the midterm and long term the Chinese leaders are more likely to show that they have been playing a different game with different rules Weiqui or no rules at all (URW).

### **Are We Already At War But Don't Know It?**

On 5 July 2011 the U.S. Department of State Bureau of Arms Control, Verification and Compliance requested that the International Security Advisory Board (ISAB) undertake a “study of policy options the United States could pursue to ensure a stable U.S.-China strategic relationship over the next 20 years to pursue its regional and global interests against a backdrop of expanding Chinese economic, political and military power.”<sup>128</sup>

One reason behind the request is that “China's expanding international footprint, its military modernizations, and related lack of transparency regarding its projected military capabilities and intentions present challenges for U.S. policy in East Asia and globally.”<sup>129</sup> The results of the study remain classified but the set of questions the ISAB was asked to address reveals a growing concern for the absence of a U.S. strategic approach to China and the lack of transparency about its intentions.

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*China's expanding international footprint, its military modernizations, and related lack of transparency regarding its projected military capabilities and intentions present challenges for U.S. policy in East Asia and globally.*

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American efforts to engage China in a cooperative and more transparent relationship have continued unabated, however. For example, beginning on 7 May 2012, General Liang Guanglie, China's Minister of National Defense and the highest-ranking military official to visit the U.S. in recent years, was welcomed at the Pentagon and various military installations (e.g. Southern Command, Fort Benning, Camp Lejeune, West Point). The visit was similar in motivation to the one hosted by former Secretary Gates in October 2009 for General Xu Caihou, China's second ranking military officer—to

demonstrate American openness and transparency, assuage China's concerns regarding the pivot to Asia, understand China's rapid military expansion, and establish a military-to-military relationship that is "healthy, stable, reliable, and continuous."<sup>130</sup> When then Secretary Gates welcomed Chinese general Xu Caihou it had been two years since his last official visit to Beijing, and China had not yet reciprocated with a visit by Secretary Gates' counterpart. Whether the visit with Secretary Panetta will be reciprocated or turn into a one-way street exchange with China was yet to be determined at the time of this writing.<sup>131</sup>

A revealing 2008 study conducted by the ISAB for former Secretary of State Condoleezza Rice has been disclosed to the public by the Federation of American Scientists (FAS), a Washington, D.C., think tank originally founded by many of the scientists who built the first atomic bomb. Entitled "China's Strategic Modernization," the ISAB task force highlighted several themes. In relation to goals, in particular, it reported that "The communist leadership in Beijing seeks three primary and interrelated goals: (1) regime survival; (2) dominance in the Asia/Pacific region, together with growing influence on a global level; and (3) prevention of Taiwan's de jure independence."<sup>132</sup> The report considered it essential that the U.S. understand and respond to the connection between these goals and the theme of China's comprehensive approach to strategic rivalry, as reflected in its official concept of "Three Warfares." Three Warfares is a URW combination of the dimensions of psychological warfare (propaganda, deception, and coercion), media warfare (manipulation of public opinion domestically and internationally), and legal warfare (use of "legal regimes" to handicap the opponents in fields favorable to him).<sup>133</sup> China's military modernization was considered as being inspired by growing nationalism and pride, and its strategic motivation was the "established goal of becoming a global power through dominance in the Asia/Pacific region."<sup>134</sup>

The ISAB report also focused on China's military offensive nuclear capabilities that provide the context within which A2/AD are expected to operate. In particular, it warned about the "emerging creep toward a Chinese assured destruction capability" and recommended that the U.S. make clear that it is unacceptable for China to create a "mutual vulnerability" or MAD (mutually assured destruction) relationship with the United States.<sup>135</sup> This warning is puzzling, however, because since China developed its nuclear program in the 1970s and 1980s, the U.S. and its Pacific allies have been

vulnerable to nuclear attack. What is unclear is how the U.S. would respond if China were to deploy a missile defense system aimed at implementing a MAD strategy. In a scathing analysis of the report, the FAS chastised the ISAB for its military focus, lack of policy recommendations for arms control, and for recommending policies that “will deepen military competition and an adversarial relationship with China.” In short, the FAS accused the ISAB task force of drawing up a very effective plan for a new Cold War with China.<sup>136</sup>

Some analysts argue that a new Cold War has already begun between China and the United States and that in addition we face a troubling security dilemma. For example, Robert D. Kaplan, writing in 2005, addressed the issue of how we would fight China.<sup>137</sup> Kaplan sees China’s re-emergence as a great power as being inevitable. China’s investment in both diesel-powered and nuclear-powered submarines is seen as a clear signal that China seeks to expand its sphere of influence beyond the Pacific. It is developing a blue-water navy in order to safeguard sea lanes through which needed resources travel from the Middle East, Africa, Latin America, and elsewhere. These are legitimate interests that will result in a military conflict, either a big war with China or a series of Cold War standoffs. The functional substitute for a NATO military alliance in the Pacific, according to Kaplan, is PACOM. China will continue to spend more money on its military in the coming decades and “our only realistic goal may be to encourage it to make investments that are defensive not offensive, in nature.”<sup>138</sup> Kaplan quotes Michael Vickers as saying that “Getting into a war with China is easy... But the dilemma is, How do you end a war with China? ... Ending a war with China may mean effecting some form of regime change, because we don’t want to leave some wounded, angry regime in place.”<sup>139</sup>

Because China’s navy and air force will not match those of the United States for decades they are not going to engage us in conventional air and naval battles. Rather, “the Chinese will approach us asymmetrically, as terrorists do. In Iraq the insurgents have shown us the low end of asymmetry, with car bombs. But the Chinese are poised to show us the high-end of the art. That is the threat.”<sup>140</sup> By high-end Kaplan mostly means A2/AD strategies and demonstrations of strength. Kaplan predicted one demonstration of strength that might occur would be “During one of our biennial Rim of the Pacific naval exercises the Chinese could sneak a sub under a carrier battle group and then surface it.”<sup>141</sup> In fact, such an event took place on 26

October 2006, when a 160-foot Song Class diesel-electric Chinese attack submarine surfaced undetected near the USS Kitty Hawk. The extremely quiet Song Class sailed within range for launching torpedoes or missiles at the 1,000-foot super carrier with 4,500 personnel on board. The Chinese display of strength and sophistication sent a shockwave through NATO and demonstrated China's growing military capability to the world. It also demonstrated the threat that they presented to the U.S. Navy.<sup>142</sup> Then in early January 2007 China followed by using a ground-based missile to hit and destroy one of its aging satellites orbiting more than 500 miles in space. It was the first anti-satellite missile test by any nation in two decades and it sent message to the U.S. that its satellites and space-based missile defense systems were vulnerable.<sup>143</sup>

Kaplan's proposed solution to the threat posed by Chinese tactics of warfare in the 21st century is for the United States to create three separate navies:

One designed to maintain our ability to use the sea as a platform for offshore bombing (to support operations like the ones in Iraq and Afghanistan); one designed for littoral Special Operations combat against terrorist groups (based in and around Indonesia Malaysia, and the southern Philippines, for example); and one designed to enhance our stealth capabilities (for patrolling the Chinese mainland and the Taiwan Strait).<sup>144</sup>

The second type of navy, the SOF navy, is of particular interest to the SOF community since in Kaplan's view at the time was that it had to be further developed. The SOF navy would require lots of small vessels such as the littoral-combat ship (LCS) being developed by General Dynamics and Lockheed Martin. The LCS is a 400-foot long, fast, shallow water operable craft, with a small crew that would be used to deploy SOF. Another critical component of the SOF navy would be the Mark V special operations craft.<sup>145</sup> This naval approach reflects the analysis by Undersecretary of the Navy Robert O. Work on naval transformation to deal with anti-access networks by using long-range unmanned systems and the role of small combatants like the LCS.<sup>146</sup> When it comes to the Navy's surface combat fleet, Navy Undersecretary Work favors LCS over frigates for Air-Sea Battle operations because they are multi-mission ships. In fact, at a Cato Institute policy forum

in May 2012, he announced that the Navy would eventually have eight LCSs based in the Persian Gulf operating from Bahrain.<sup>147</sup>

In general, these viewpoints represent a one-dimensional, purely military approach to the challenges presented by a rising China and adversaries like Iran while the nonmilitary elements of URW are not given full coverage. Regarding our efforts in the Vietnam War, Robert F. Turner has reminded us that the biggest differences between our actions in Korea in 1950 and Vietnam 15 years later were that the communist armed aggression was covert and Hanoi ran a truly brilliant political warfare campaign to mislead the American people into believing our cause was dishonorable.<sup>148</sup> The new thinking of ASBC is in terms of an arms race triggered by the security dilemma in a new Cold War between China and the United States. But while Kaplan and others think about how we would fight China using our military capabilities, Robert Bunker warns us that URW guides their strategy; David Shambaugh that we are dealing with a conflicted China; and Aaron Friedberg that China wants to win without fighting.<sup>149</sup>

To Bunker, the publication of *Unrestricted Warfare* had the effect of creating a “perceptional trauma” among U.S. analysts and policymakers. That is, “Every time Beijing engages in an economic, political cultural, business, media or other form of foreign activity, we are now forced to ask ourselves if this is a component of China’s unrestricted warfare tactics—because we have been informed...that there are no rules and nothing is forbidden.” In turn, this had created a “disruptive targeting” situation comparable to that created by al-Qaeda affiliates and radicalized individuals because there is ambiguity in determining whether incidents and events are well-planned action components of a grand strategy.<sup>150</sup> Therefore in dealing with China and other rivals or adversaries, ambiguity will be a large component and we “need to respond or create some form of countermeasure to the perceptional trauma created by the ambiguity.”<sup>151</sup>

In order to better determine the threat potential of China, Dr. Bunker proposed a modification to the 2006 Quadrennial Defense Review (QDR) threat categories. The QDR threat categories are in the form of a 2x2 table or four-square box with irregular challenges in the upper left quadrant and moving clockwise the catastrophic, disruptive, and traditional challenges in other quadrants (See Figure 6). The view in the QDR diagram is that the threats are moving from the traditional challenge to the other three quadrants. However, Bunker believes that the URW practitioners present

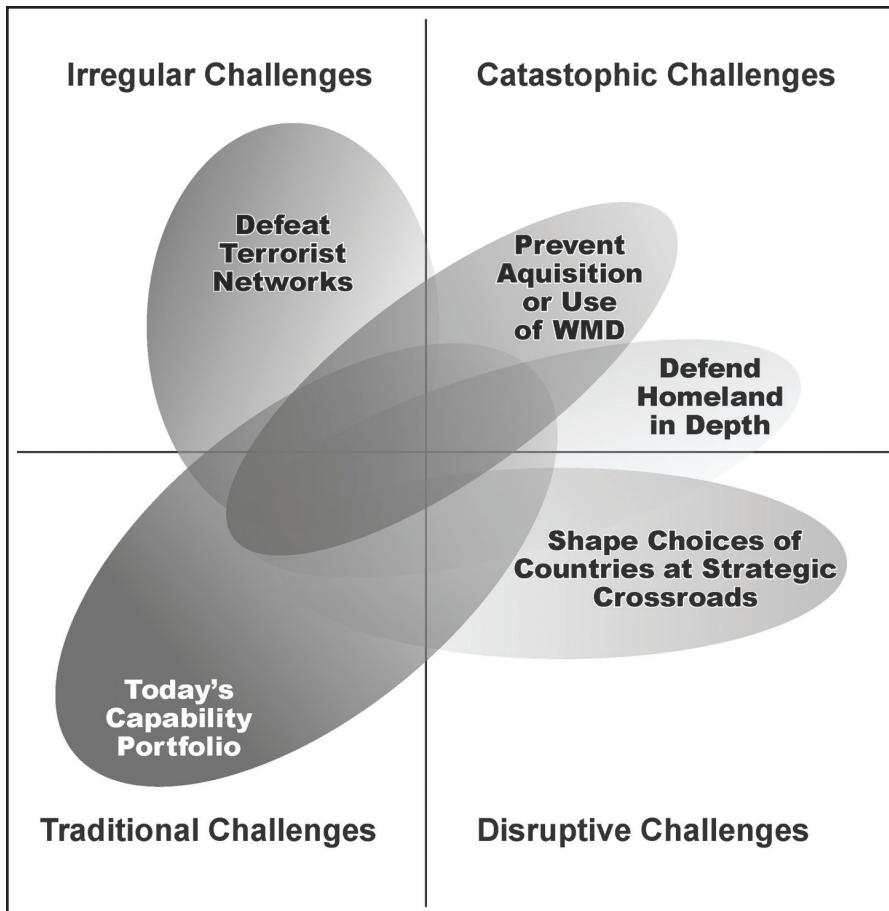


Figure 6. Threat diagram from Department of Defense, 2006 QDR.

dynamic threats that move along a time continuum and the proper analysis should resemble the diagram in Figure 7. This modified model takes into account the multidimensional, multimeans combinations, and it makes room for the blending or “cocktail” mixes characteristic of the URW model.<sup>152</sup>

One reason for the ambiguity created by China on our analysts and policymakers is that its own leadership is conflicted. David Shambaugh summarized the gist of the situation when he said:

What the world is witnessing in China’s new power posture is in part the product of an on-going intensified internal debate, and represents a current consensus among the more conservative and nationalist elements

to toughen its policies and selectively throw China's weight around. Although there seems to be domestic agreement at present, China remains a deeply conflicted rising power with a series of competing international identities. ... Understanding these competing identities is crucial to anticipating how Beijing's increasingly contradictory and multidimensional behavior will play out on the world stage.<sup>153</sup>

The Chinese elite groups are divided along a spectrum of global identities ranging from isolationist/nativism, realism, major power, Asia first, Global South, selective multilateralism, to globalism. According to Shambaugh and confirmed by Henry Kissinger, realism "with Chinese characteristics" is popular among the military and university elites, and they are now the dominant group.<sup>154</sup> This group is driven by a certain "element of retribution" in their thinking. Many Realists harbor a strong sense of aggrievement from China's long period of weakness, and believe that now that China is strong,

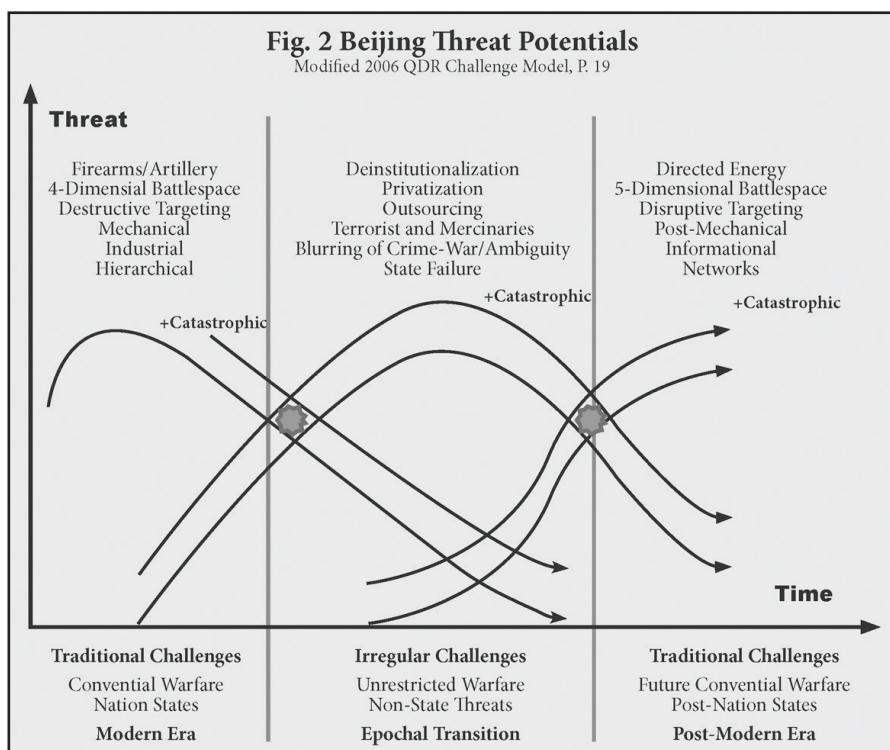


Figure 7. Bunker's Fig 2. Beijing Threat Potentials. Modified 2006 QDR Threat Challenges/ Image courtesy of the U.S.-China Economic and Security Review Commission.

it should retaliate against those countries that have done China wrong in the past.”<sup>155</sup> One must also recall that the authors of *Unrestricted Warfare* wrote the book after feeling humiliated by the U.S. intervention during the 1995-1996 Taiwan missile crisis.

Because the Chinese are adopting a realist posture the U.S. has begun to view them in realist terms, too. The strategic “pivot” is therefore the logical counter to a rising military/economic power aspiring to regional or global hegemony. Shambaugh suggests, however, that adopting such a posture will “contribute to an inexorable action-reaction cycle” and the U.S. needs to devise a more complex strategy.<sup>156</sup> Such a strategy has been proposed by Aaron Freidberg who believes that following Sun Tzu’s dictum, China wants to win without fighting.<sup>157</sup> China “seeks to displace the United States as the dominant player in East Asia” he writes, “and perhaps to extrude it from the region altogether, while at the same times avoiding a potentially disastrous direct confrontation.”<sup>158</sup> To accomplish its objective China’s strategic approach has combined four elements: (1) cultivate the “appearance” of good relations and close cooperation with Washington; (2) build alternative new regional institutions designed to exclude the U.S. (e.g. Shanghai Cooperation Organization, ASEAN Plus Three) and weaken the foundations of the American regional alliance system; (3) stabilize its continental “rear areas” in Central Asia and the Russian Far East to establish a “land security environment”; and (4) focus on threats and opportunities in the maritime domain.<sup>159</sup> The latter is the most challenging and important element in the strategy since “China must find a way to bring Taiwan back, and push America out, while keeping Japan down.”<sup>160</sup> In the near term, China’s objective is not to peel away U.S. allies but rather a URW line of psychological, diplomatic, cultural, and economic operations seeking to “diversify their interests, complicate their calculations, blur their loyalties, and set the stage for further erosion in what were once rock-solid, diplomatically monogamous relationships.”<sup>161</sup> Interestingly, for Freidberg “it is Japan, not Taiwan, that will increasingly become the focus of Chinese strategy” and the Sino-Japanese summer of 2012 dispute over the Senkaku (Diaoyu) islands seemed to confirm it.<sup>162</sup> In this high stakes great game of Weiqi, two possible outcomes are possible—an Asian region where the U.S. and Chinese spheres of influence would overlap, or a new Sino-centric order in East Asia with the U.S. island of Guam as the westernmost outpost of American Pacific power.<sup>163</sup> Assuming China continues to grow economically and militarily

without a domestically generated regime change toward liberal democracy, what strategy best serves the security interests of the United States? Americans recoil from the idea of ceding power to a repressive, secretive, undemocratic system led by realist hardliners with hegemonic aspirations. Freidberg's recommendation is to engage China diplomatically and economically, while containing it by preserving a favorable balance of power for military deterrence based on tightening cooperation with our regional partners, defeating the anti-access/area denial capabilities of the Chinese PLA, adopting the Air-Sea Battle concept with its dispersal, hardening, and reinforcing approach, concealed platforms, long-endurance unmanned vehicles, and arsenal ships with precision weapons. In this "congagement plus" (containment + engagement + enhanced military) strategy the greatest advantage would be the U.S. "command of the global commons and, in particular, of the world's oceans" mainly because it is where China is most vulnerable to a prolonged naval blockade. American experts like Freidberg support what the U.S. Government (USG) has begun to do in recent years, namely, tighten its bilateral ties with democratic treaty allies, semi-allies, and friends like South Korea, Japan, Australia, Thailand, and the Philippines, as well as with Taiwan, Mongolia, Indonesia, Singapore, and most importantly India.<sup>164</sup>

In this U.S. combination, however, our former adversary Vietnam is also set to play a complex role due to its prior violent encounters with China and its long-standing relationship with Russia. Thus, on 3 June 2012, then Secretary of Defense Leon Panetta became the highest U.S. official to visit Vietnam since the end of the war. His visit was officially motivated by the desire to encourage Vietnam to help find the remains of about 1,200 unaccounted for U.S. military servicemen. But Secretary Panetta probably also discussed with Vietnamese officials the topic of Vietnam allowing the U.S. military to use the deep water facilities for refueling and forward deployment of equipment, troops, and supplies, in support of the strategic pivot. However, Vietnam appears to be playing both the United States and Russian navies' interest in using the port.<sup>165</sup>

It is possible that the ongoing pivot to Asia-Pacific might help reduce

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*Assuming that China continues to grow economically and militarily without a domestically generated regime change toward liberal democracy, what strategy best serves the security interests of the United States?*

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tensions in the larger area by reassuring our allies and friends, but it may also lead to more tension and conflict if Chinese leaders see it as an offensive move to encircle China and prevent it from fulfilling its national destiny. It has been suggested that China could counter the pivot, for example, by following a combination of initiatives including: breaking the semi-containment ring by dropping North Korea and drawing South Korea into its orbit; encouraging India to continue to hedge its position vis-à-vis the U.S. in solidarity with the other three members of the five BRICS (e.g. Brazil, Russia, China); following an access-denial approach in the medium term but switching from building a blue-water navy to building missiles and drones that could swarm U.S. carriers; buying European debt to gain leverage since it would drive up U.S. interest rates; keeping the U.S. distracted and dissipating its treasure and energies in the periphery by propping up global troublemakers like Sudan, Zimbabwe, and others (e.g. North Korea, Syria, Iran, Cuba, Venezuela) as we seek to enforce “the responsibility to protect” principle.<sup>166</sup>

Additionally, as China expert Kenneth Lieberthal notes, one must remember that pivoting might be easier said than done.<sup>167</sup> As the U.S. begins to implement its strategy of playing a leading role in Asia it will find itself drawn into a plethora of issues and occurrences, some centuries old, ranging from: terrorism and nuclear proliferation to state versus state conflicts involving territorial and maritime claims, wars, ethnic and religious rivalries, contending multilateral organizations, vast open maritime and ocean areas extending from the Indian Ocean to the Pacific West Coast to guard and protect against piracy; tsunamis, earthquakes, and other natural disasters; displaced populations and vast migration; and humanitarian crises due to poverty, disease, and social problems. The effectiveness of the SOF in the global war against violent extremism particularly in the Middle East and Africa, is due to being well coordinated with conventional forces and properly employed in a campaign used for strategic effects, not just for isolated raids.<sup>168</sup> Thrust into the vortex of the Asia-Pacific, SOF might run the risk of exhaustion by becoming the regional first respondents of choice, the 911 point-of-contact of the Asia-Pacific. In brief, regarding China’s military buildup and the pivot to Asia, PACOM and USSOCOM both must heed Nathan Freier’s insightful warning:

It might be useful to recognize that the purely military aspects of

hybrid, high-end challenges, e.g. a hostile state's armed forces, may be peripheral to the actual conflict or competition. Instead, these components might be diversions or foils employed by adversaries to increase U.S. risk calculations or capture U.S. attention while the real "war" occurs in other domains—politics, economics, social action, etc.<sup>169</sup>

As the United States pivots to Asia-Pacific, the leadership must note that in addition to the issue of having sufficient military and economic resources for implementation, we must counter the multidimensionality of the URW strategy. As previously noted, URW comprises several domains including one where a war might already be occurring, namely, the dimension of lawfare. It is possible that like our adversaries in the Middle East, their Asian counterparts may already be at war with us by using international lawfare to gain advantage, holding us in check while working to balance.

## 4. Lawfare

The United States is committed to the rule of law as a foundational principle of its political system. As such, it is considered a source of our strength and stability. Establishing the rule of law is also a major component of our foreign policy as shown in our effort to establish modern judicial systems during our interventions in Iraq and Afghanistan. The legalization of global politics through international human rights law, for instance, seeks to establish the rule of law on a global basis as an alternative to the use of force. Our commitment to the rule of law is also a vulnerability when our enemies use it against us, however. For instance, on 31 March 2004, four Blackwater Security Consulting private military contractors were part of a convoy ambushed by insurgents in the Iraqi town of Fallujah. The four were killed and their mutilated and burned corpses were hung from a bridge crossing the Euphrates. One of the most wanted Iraqi terrorists, Ahmed Hashim Abed, codenamed “Objective Amber,” was suspected of being the mastermind of the operation and was captured in September 2009 by Navy SEALs from Seal Team 10. Following the capture and interrogation of Abed he filed charges against three of his captors claiming that they mistreated him by punching him and had also made false statements. The three SEALs faced assault charges but refused non-judicial punishment (“a captain’s mast”) and requested a court-martial for violation of the Uniform Code of Military Justice.<sup>170</sup> The decision to court martial the SEALs was consistent with the U.S. military’s concern about detainee abuse in the wake of the strategic military disaster known as the Abu Ghraib scandal.<sup>171</sup> But many objected by pointing out that captured al-Qaeda documents like Manual 137 showed that terrorists were being trained to understand and manipulate the U.S. and other Western-style legal systems; it was an example of how terrorists used litigation in courts as a tactical weapon against the United States—that is, how they engaged in the dimension of URW known as lawfare.<sup>172</sup>

### Defining Terms

Litigation is a battle of words and wills that can be expressed in Clausewitzian terminology as the continuation of business carried out by other means to impose your will on the opposition (the enemy).<sup>173</sup> The term lawfare is not found in the Oxford English Dictionary but in the contemporary context it was first introduced and made popular by retired U.S. Air Force Major

General Charles J. Dunlap Jr. in a 2001 essay where he defined it as “the use of law as a weapon of war” in order to describe “a method of warfare where law is used as a means of realizing a military objective.”<sup>174</sup> The term generated a growing body of literature both in support and opposition prompting Dunlap to defend and refine it to mean “the strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective.”<sup>175</sup> In a subsequent piece he almost apologetically clarified that the purpose of using the concept in the national security context was “to provide a vehicle that resonates readily with non-legal audiences, particularly in the Armed Forces … conceiving of the role of law in more conventional military terms has its advantages. Understanding that the law can be wielded much like a weapon by either side in a belligerency is something to which a military member can relate.”<sup>176</sup> A report by legal experts recently asked whether lawfare was worth defining and noted that unlike Dunlap’s original conception it has been “used most commonly as a label to criticize those who use international law and legal proceedings to make claims against the state, especially in areas related to national security.”<sup>177</sup> Dunlap, after addressing the concerns of critics, concluded that “lawfare is still a useful term, and is optimized when it is employed consistent with its original purpose of communicating to non-specialists how law can serve as a positive good in modern war as a nonviolent substitute for traditional arms.”<sup>178</sup>

Colonel Mark W. Holzer, U.S. Army, argues that there are three definitional branches to lawfare. General Dunlap’s definitions present the negative or defensive view of lawfare framing it as a tool used to abuse legal ideals and processes as the U.S. and its citizens have been the target of numerous legal actions in European and domestic courts aimed at negatively impacting the U.S. ability to fight Islamic extremists.<sup>179</sup> On the other hand, the “nexus” approach frames lawfare as activities with a legal nexus that are undertaken during times of armed conflict rather than a strategy of America’s enemies. The third or neutral approach does not ascribe negative or positive connotations to the term, nor does it suggest a road for policymakers.<sup>180</sup> He concludes that

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*... the “nexus” approach frames lawfare as activities with a legal nexus that are undertaken during times of armed conflict rather than a strategy of America’s enemies.*

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the U.S. needs a comprehensive and holistic offensive warfare approach to the subject.<sup>181</sup>

The authors of *Unrestricted Warfare* saw the importance and utility of law as a component part of their comprehensive strategy when they included international law warfare as one of their 15 lines of operation.<sup>182</sup> The DOD 2008 ISAB report highlighted Chinese offensive lawfare as one of the “Three Warfares” in China’s grand strategy.<sup>183</sup> The logic behind focusing attention on the law is obvious since in the United States and Western democracies the center of gravity is their commitment to the rule of law and access to this vulnerability is facilitated by open and transparent political systems which allow fair access to the courts. In former Secretary of Defense Rumsfeld’s words:

Lawfare uses international and domestic legal claims, regardless of their factual basis, to win public support to harass American officials—military and civilian—and to score ideological victories. Each legal action is a thread. The cumulative effect binds the American Gulliver. Enemies who cannot score military victories can nevertheless impair our defenses by litigating warfare. Lawfare is particularly effective against the United States, because it exploits America’s laudable reverence for the law and uses our own finest instincts and institutions—our very respect for law—to make us vulnerable to enemies who have nothing but contempt for those very instincts and institutions.<sup>184</sup>

## Characteristics

Lawfare as a form of warfare is consistent with Carl von Clausewitz’s notion that war is a continuation of politics by other means. Lawfare is not as deadly as war in traditional ways with guns, tanks, cannons, or ballistic missiles, but it can be as effective. As noted above, lawfare can be *offensive* and *defensive* in nature and it is used against both domestic and foreign opponents. Paul Williams notes that “the recent case by Serbia against Kosovo in the International Court of Justice on the question of the legitimacy of Kosovo’s declaration of independence is a prime example of how a party switched to an offensive lawfare tactic after losing on the battlefield.”<sup>185</sup> On the other hand, Kosovo engaged in defensive lawfare for almost a decade as it prepared against the legal attack that they knew would follow after the Serbian military attack. Thus, Kosovo, “working under the supervision of

the international community, developed standards before status, protected human rights, created a court system, and had numerous elections that met international standards. These actions were Kosovo's version of siege walls and trenches to defend its own right of self-determination.”<sup>186</sup>

As the trial of the SEALs involved in the Ahmed Hashim Abed case illustrated during the Global War on Terror, terrorists have relied on lawfare as part of their operational plans. Under the Bush and Obama administrations the United States response to lawfare has been mostly defensive, however. That is, government officials like former Secretary of Defense Rumsfeld, for instance, felt the need to protect themselves after being targeted as defendants in frivolous lawsuits and, among other things, opposed participation in the International Criminal Court out of fear that American leaders or soldiers serving overseas would be accused and tried for implementing U.S. foreign policy.<sup>187</sup> Colonel Kelly D. Wheaton, U.S. Army, has emphasized that legal advisors to strategic leaders must consider and provide both proactive and responsive legal advice and support in lawfare, noting the need for the U.S. military to employ legal support more aggressively to address strategic-level concerns.<sup>188</sup> Likewise, Kittrie advocates a more offensive oriented lawfare policymaking approach against terrorists and states sponsoring terrorism by relying on tools like the strong sanctions used against the Gaddafi regime in Libya.

In exchange for the lifting of sanctions imposed by the United Nations and United States, Libya halted its support for terrorism, paid \$2.7 billion to the families of the Pan Am Flight 103 bombing victims, and allowed a team of British and U.S. government experts to enter Libya and dismantle its weapons of mass destruction infrastructure.<sup>189</sup>

The current threat presented by Iran's program to develop a nuclear capability, coupled with its violation of UN Security Council resolutions, its sponsorship of terrorism, and its abuse of human rights, presents an opportunity to use against the Iranian regime similar tools of lawfare.

However there is an asymmetric balance of law between non-state actors, who do not tend to follow international norms, and nation-states who are held both by international law and binding treaties. The conduct of lawfare against the United States relies on this asymmetry.

The Burmese (Myanmar) junta presents an example of what is called a

multi-tiered offensive approach to lawfare within the domestic sphere.<sup>190</sup> Accordingly, the Burmese junta engaged in lawfare operations against opposition leader Aung San Suu Kyi, General Secretary of the National League for Democracy, through the filing of a string of personal lawsuits against her. As a result, she spent 15 years either under house arrest or in detention while defending herself against the legal assault from the military government. She became one of the world's most prominent political prisoners living as an exile in her own country and won the Nobel Peace Prize in 1991 and the Raoul Wallenberg Medal in 2011 in absentia for her non-violent struggle. When the international community through the UN called for her "immediate and unconditional release" the junta shifted tactics by seeking engagement with the international community and announcing that it was moving to change the constitution and restore democracy. This tactical move raised the prospect of free and fair elections at home and abroad allowing the military junta to gain more time to remain in control of the government while avoiding international economic sanctions. Eventually, suspicion that the junta was engaging in lawfare led to the threat of economic sanctions and the establishment of a UN Commission of Inquiry to investigate war crimes. In 2010, just before UN special envoy Tomas Ojea Quintana was to arrive in Myanmar to evaluate the state of human rights, the junta released opposition leader Tin Oo and on 13 November 2010, Aun San Suu Kyi herself.<sup>191</sup> On 16 June 2012 in Oslo, Norway, Suu Kyi received the Nobel Peace Prize she had won 21 years earlier. Not surprisingly, given the steadily growing international pressure and the parallel revolts against authoritarian regimes in the Middle East, the Myanmar junta is learning how to deal with the opposition in the digital age and did not "just change from uniforms to business suits" but relaxed censorship, legalized trade unions, and released political prisoners bringing about a marked change in the political atmosphere.<sup>192</sup>

While the Burmese example describes the misuse of law by a repressive regime against its domestic opposition, in the United States the use of lawfare for URW purposes presents a national security threat associated with its expeditionary power projection and the use of force beyond its geographic borders.

### **Lawfare On the Docket**

The 2005 National Defense Strategy of the United States clearly identified

exposure to lawfare as one of our nation's vulnerabilities: "Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism."<sup>193</sup>

In the United States, the most significant social, economic, and political controversies eventually become legal issues before the courts. The legal strategy of the weak or lawfare is what URW is all about to such an extent that Charles Dunlap considers it a decisive element of 21st century conflicts.<sup>194</sup> As the United States pivots to Asia-Pacific the forthcoming decline in general purpose forces means that the SOF operational tempo may increase—and so will their potential exposure to lawfare. For instance, an enemy might use a personal lawsuit against the USSOCOM senior leaders in order to harass and distract them from their mission. This "decapitation strike" using legal briefs, depositions, requests for discovery, and other legal tools are the current and effective non-lethal substitutes for precision munitions.<sup>195</sup>

A movement is gestating to mobilize weak countries of the geopolitical South to use lawfare against the countries of the developed North and in particular the United States. The rationale is that as an underutilized tool, lawfare allows nation-states like Pakistan, for example, to use international law to challenge the operation of unmanned aerial vehicles (UAVs) in their territory. The need to mobilize is due to several limitations found in weak states. One is a lack of trained international lawyers; another is the domination of the principles and processes of the field by the "global North;" a third is the undervaluing of international law as an effective instrument reflected in a failure to invest resources in developing legal capacity.<sup>196</sup>

In the meantime, nation-states, terrorist networks, and individuals have turned to human rights litigators or nongovernmental organizations (NGOs) and volunteer legal counsel to gain access to the court systems while also supporting the expansion of the jurisdictional operation of the International Criminal Court. In fact, some American lawyers welcome and embrace lawfare as a substitute for more destructive forms of warfare. As Carter puts it,

First, lawfare has the obvious advantage of being safer than conventional warfare ... lawfare rarely generates the collateral damage of conventional warfare. Second, our nation has developed safeguards to protect against the malicious use of its court processes. ... In short, our legal system today is far more sophisticated than the simplistic

tactics of our enemies, and we should have more faith in its ability to protect us.<sup>197</sup>

But Carter oversimplifies the nature of the threat presented by the development of a lawfare capability. William G. Eckhardt writes:

Although the United States is not likely to lose militarily in the battlefield, the United States is far more vulnerable in the world of public opinion. Knowing that our society so respects the rule of law that it demands compliance with it, our enemies carefully attack our military plans as illegal and immoral and our execution of those plans as contrary to the law of war.<sup>198</sup>

In the last two decades, due to the war against radical extremists lawfare-related issues both on the offensive and defensive sides range from detention, rendition, extradition, and interrogation of enemy combatants to the use of military commissions; state secrets privilege; lawsuits against supporters and financiers of terrorist networks as well as banks holding accounts linked to terrorist organizations (e.g. Hamas); and predatory lawsuits to intimidate and bankrupt counterterrorism experts, law enforcement personnel, and media personnel disseminating information about terrorist networks and their sources of financing.<sup>199</sup> As discussed in the next section, a hot international legal issue is the use of UAVs to track and eliminate terrorists and other high value targets.

## To Drone Or Not To Drone

In the book *Unrestricted Warfare*, the authors assert that changes in weaponry precede revolutions in military affairs.<sup>200</sup> The most recent such change is the use of the non-physical domain to conduct information warfare in the form of cyber attacks (e.g. Stuxnet), targeted killings with robotic weapons like UAVs (see Figure 8) or the autonomous SGR-A1 robot sentry used by South Korea to patrol its border with North Korea. They have changed reality by facilitating the conduct of warfare in undefined territory.<sup>201</sup> Their use has shifted the focus of attention of lawfare practitioners since technology continues to stay ahead of law and policy. In particular, they point to the use of UAVs to affect targeted killings by the United States against sub-state actors in uncontrolled areas of sovereign states not at war with the United

States—e.g., Pakistan, Somalia, Yemen—and the killing in Northern Yemen of American citizen Anwar al-Awlaki, a leader of al-Qaeda in the Arabian Peninsula.



Figure 8. An MQ-9 Reaper unmanned aerial vehicle lands at an airfield in Afghanistan. U.S. Air Force photo by Staff Sgt. Brian Ferguson.

### Anwar al-Awlaki

On 30 September 2011, the global media reported that U.S. forces in Northern Yemen acting under the direction of the Central Intelligence Agency (CIA) had conducted a UAV strike against a car containing al-Qaeda in the Arabian Peninsula leader Anwar al-Awlaki, Samir Khan, an American born in Saudi Arabia and editor of al-Qaeda's English language web magazine *Inspire*, and two other al-Qaeda members. At the time, al-Awlaki was a U.S. Treasury Department "Specially Designated Global Terrorist" also included in the UN Security Council Resolution 1267 list of terrorists, and considered the "most dangerous man in the world" by the New York Police Department Counterterrorism Division.<sup>202</sup> The al-Awlaki case raised one important question, however: was he a true belligerent or a civilian who transformed himself into a legitimate target by threatening the interests and security of the United States by his actions?

The targeting of al-Awlaki, an American citizen, became a magnet for a combination of media and lawfare activity because prior to his demise the

New York Times had reported on 6 April 2010 that with the approval of the National Security Council, President Obama had authorized his targeted killing.<sup>203</sup> Soon thereafter, on July 2010, the American Civil Liberties Union and the Center for Constitutional Rights both had been contacted by al-Awlaki's father and on 30 August the two organizations filed a "targeted killing" lawsuit against President Obama, then CIA Director Leon Panetta, and then Defense Secretary Robert Gates, seeking an injunction.<sup>204</sup>

The United States Constitution separates, grants, prohibits, denies, and distributes power but it does not specifically mention "foreign affairs" or "national security," thus presenting an invitation to the three branches of the federal government to struggle for the direction of American foreign policy.<sup>205</sup> Nonetheless, as Robert Turner notes, "through most of our history Congress has been deferential to the President in matters of diplomacy, intelligence, and the conduct of war, there has not been a lot of litigation in this area. But cases have made their way to the Supreme Court from time to time, and the Court has traditionally been deferential to presidential power in these areas."<sup>206</sup> On 19 February 1976, President Gerald Ford had issued Presidential Executive Order (EO) 11905 banning political assassination for the first time. This EO was superseded on 24 January 1978 by President Carter's EO 12036 which closed some loopholes. Then, on 4 December 1981, President Ronald Reagan issued EO 12333 providing that "No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination," and prohibiting indirect participation in that "No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order."<sup>207</sup> Unfortunately for al-Awlaki and other terrorists, all this had changed after the 9/11 attacks. As the 9/11 Commission noted, in 1998 the Clinton Administration had shut down an operation based in Afghanistan that was targeting Osama bin Laden with cruise missiles, due to the high amount of collateral damage and low confidence level of actionable intelligence. It was not until November 2001 that the first armed UAV succeeded in targeting al-Qaeda military commander Mohammed Atef in Afghanistan.<sup>208</sup> Beginning in 2002, the U.S. began to target high-value targets beyond Afghanistan. One such operation was successfully conducted in Yemen against one Ali Qaed Sinan al-Harithi and five other terrorists traveling together including American citizen Kamal Derwish. Al-Harithi was the mastermind behind the 12 October 2000 bombing of the USS Cole.<sup>209</sup> In light of previous precedents of executive

actions in the conduct of military operations against U.S. enemies, the federal district court in the Nasser Al-Aulaqi v. Barack H. Obama, Leon C. Panetta, and Robert M. Gates case deferred to the president, in his capacity as commander in chief, by denying the injunction and dismissing the case on the grounds that al-Awlaki's father did not have standing (i.e. the legal right to initiate the lawsuit) and because under the "political question" doctrine the targeting was not a legal question but a political decision for the political branches—i.e. Congress and the president.<sup>210</sup>

In a 30 March 2012 report the UN Special Rapporteur on Extrajudicial Executions alleged that the USG has continuously engaged in targeted killings in the territory of other states and that there has been "a dramatic increase in their use over the past three years" drawing his conclusions from published studies and a database on drone strikes.<sup>211</sup> The al-Awlaki takedown reflected the increased use of UAVs in kill-or-capture missions against terrorists and highlighted the legal and moral issues associated with the role of terrorists and other non-state actors in modern warfare. Non-state actors exploit the "asymmetric balance of law" by using the laws of war themselves as weapons, as exemplified by the use of human shields. Under international law, "nation-states must differentiate between civilian and military targets and must keep collateral damages to a minimum. ... Aware of this obligation, non-state actors may respond by sending civilians to the military site in order to discourage the attack" by doing so the state must either abandon the operation or risk causing a great number of civilian casualties.<sup>212</sup>

### **From Harsh Treatment To Targeting**

The increased reliance on targeted killing began in 2008 after the USG lost a string of judicial cases—e.g. Rasul v. Bush, Padilla v. Rumsfeld, Hamdi v. Rumsfeld (2004); Boumediene v. Bush (2008)—involving the right of unlawful or unprivileged enemy combatants and detainees held in the Guantanamo Bay detention facility and foreign lands to gain access to the U.S. court system.<sup>213</sup> They did so by challenging the denial of habeas corpus, attacking the legality of military commissions, and the right of the USG to imprison them without trial until the conclusion of hostilities. In those and other cases, NGOs, human rights groups, detainees, their families, and supporters sought to limit the USG's ability to wage war by denying it the use of harsh measures to obtain credible and reliable intelligence from the

Guantanamo detainees and enemy combatants held outside U.S. territory. This legal attack was a blowback consequence of the 2004 abuses at the Abu Ghraib prison in Iraq and the use of enhanced interrogation techniques in Guantanamo prison, but the unintended consequence was to reduce the number of people captured and detained as the USG sought to avoid a “catch and release” legal game with terrorists.

Targeted killings in warfare are not unusual, however, as the shooting down of the plane carrying Admiral Yamamoto during World War II exemplifies; nor do they need to rely on advanced technology weapons like the UAVs since they can take place with a knife, a bullet, poison, or even by asphyxiation with a pillow. The argument advanced in favor of the strategic use of UAVs against an elusive and networked enemy is that terrorists cannot easily be arrested and brought to justice, while the use of highly sophisticated precision weapons and munitions is economical, reduces collateral damage (i.e. civilian deaths), and falls within the international legal principle of proportionality in the use of force. Generally, as far as the latter is concerned, in the UN system the *jus ad bellum*, or law on the use of force, is codified in the UN Charter Article 2 (4) that prohibits the use of coercive force against other states. Article 51 of the charter provides an exception to the use of force as a countermeasure to an armed attack. Use of force in collective security action is also allowed under Chapter VII of the UN Charter. In those instances, the use of force must be proportional to the unlawful aggression. In the *jus in bello*, or Law of Armed Conflict under the Geneva Conventions, proportionality traditionally means that in the conduct of hostilities belligerents do not have an unlimited choice of means to inflict damage on the enemy and the countermeasure must be proportionate to the attack and the needs of self-defense. The problem is that terrorists and other non-state actors are not parties bound by these treaties and conventions nor are they likely to abide by them. So as far as the use of UAVs as the weapon of choice, “the principle of proportionality is generally held to govern the extent to which a provocation may be lawfully countered by what might otherwise be an illegal response.<sup>214</sup>

Potential or actual practitioners of lawfare against the United States and its allies have criticized and sought to restrict the use of UAVs for targeting terrorists, combatants, guerrillas, as well as transnational criminal organizations and drug cartels acting in concert on a global scale. The UN Rapporteur, for instance, naively derides the lack of transparency regarding

the legal framework governing targeted killings and requested the USG “to clarify the rules that it considers to cover targeted killings.”<sup>215</sup> The USG responded by referring him to a speech by Harold Hongju Koh, Legal Advisor of the U.S. Department of State, in which Koh had clarified that the USG was acting in self-defense and was engaged in an “armed conflict” against al-Qaeda, the Taliban, and associated forces, that all of these entities were not included in the state-based UN system but were legitimate targets when it comes to the use of force under international humanitarian law. But the Rapporteur deemed it an unsatisfactory response.<sup>216</sup>

It is hard to believe that the UN Special Rapporteur truly expects the USG, or for that reason any self-respecting government, to disclose to the world its secret sources and methods—i.e. how it goes about finding, confirming, and establishing its classified threat matrix, the location and capabilities of its enemies, and the order of priority for disposing of threats to its national security. Suffice it to say that a careful search of the Internet would reveal to any observer that the U.S. follows strict protocols in the conduct of its UAV operations. This is evident in an unclassified video of an actual strike that was shown by a U.S. Air Force legal advisor to an audience at Arizona State University.<sup>217</sup> What is believable is that in international organizations like the UN Human Rights Council, the United States faces legal challenges to its power and leadership in not so subtle ways. The objective is to use international law itself to web constraints on the use of force.

### **UAV Concerns**

In addition to the United States there are now about 40 countries that operate UAVs for military use. The unmanned aerial vehicles are not unmanned and those of the U.S. are operated by a joint forces team of specially trained flight operators and pilots together with intelligence analysts and lawyers who participate in the targeting process.

The equivalents of “burnout” and the possibility of developing a callous, wargame mentality are two of the things that should be of concern in the use of UAVs. Faulty intelligence leads to tragic mistakes in targeting as the complaints from President Karzai should remind. The mistakes may occur in the identification of the wrong target, in failing to minimize collateral damage, or in ignoring cultural aspects of the battlespace. For SOF operating in target rich places in the Middle East and soon in the Asia-Pacific there will be a need for more Judge Advocate General-trained lawyers keen on the

need to protect the team against aggressive lawfare action by opponents and their supporters. The lawyers would need to provide counseling on when and where the laws of war apply given their targeting criteria.



## 5. Conclusion: Retooling for the Future

The 21st century special operator faces not only enemies who can kill with high-velocity bullets, suicide bombers, and improvised explosive devices. He confronts an array of non-kinetic weapons of comparable lethality—ranging from a computer worm or virus that might misguide the global positioning system in an aircraft tracing its trajectory, to a false charge of rape by an unknown local, to a legal deposition about his role in a nighttime raid resulting in the loss of innocent lives. Under conditions of URW his battlefield is now everywhere and anywhere, but particularly inside his own head, for that is where he is most vulnerable. If the latter sounds farfetched one should check the military suicide rates since the 9/11 attacks because the URW opponent is unquestionably examining it too as he plans his next move. The attack could be in the form of a honey trap aimed to destroy the operator's effectiveness by disrupting his family stability or the hacking of his financial record to ruin his credit and deprive him of a security clearance. In a war with no rules how do you live by the rules? Such is the mind game challenge presented by the URW model and such is the “perceptual trauma” that we must overcome—what is real about URW?<sup>218</sup> How are we going to confront it as we pivot to the Asia-Pacific region where the strategy was best enunciated?

At the core of the URW model is the conception of integrated attacks along many lines of operation—from cultural, financial, and psychological to terrorist networks, media, and as noted above lawfare. To counter this combined array we must develop a grand strategy directed at the same dimensions and component elements in an interlocking but dynamic fashion. We are best advised to recognize that we are engaged in a total war in the grandest of forms and for the most indefinite period of time. The enemy is not one but an amorphous and opaque supra-combination of states and non-state actors that relies on deception and that is global in reach and objectives. It seeks to avoid a direct military confrontation because it seeks to win without fighting. One can see the strategy operationally manifested at the state level in the diplomatic and military moves, for example, of the current Iranian regime, as well as those in North Korea and Venezuela. Another contributing challenge is the transforming combination of terrorist networks, transnational criminal organizations, and drug cartels into a cooperative but non-integrated global set of mega-networks that threaten failing states like

Yemen or occupy ungoverned spaces in failed states like Somalia or the tri-border area of South America. They also defy the international legal order by using the international legal system to their benefit.

Lawfare is a real and growing threat to countries guided by the rule of law. The late U.S. Supreme Court Justice Robert Jackson was prescient when he wrote:

It would be difficult to devise more effective fettering of the field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home.<sup>219</sup>

To counter this set of challenges the SOF community must also learn to prepare the legal battlespace as the U.S. pivots from the Middle East to the Asia-Pacific region. Lessons learned in dealing with legal tactics used by Jihadist detainees and combatants in the Middle East and North Africa must be taught to the new generation of operators and adapted for the new security environment they will encounter in Asia. The al-Qaeda manuals on how to manipulate the legal system must be introduced, explained, and studied by the SOF operators. One crucial step will be to engage human rights NGOs, opinion makers, and cultural leaders in the area of operation. A region-wide narrative as well as simplified local narratives explaining the whys and how of the American “return to Asia” should be widely disseminated to avoid exploitation by enemies and opponents wishing to trigger anti-American nationalism by reviving negative memories of Western colonialism and racism. Allies and indigenous friends in the region should be trained and included in indirect approach operations.

In the last three decades the world has been visited by a “flock of black swans,” those highly improbable, hard to predict, rare events of very high-impact<sup>220</sup> ranging from the collapse of the Soviet Union, the 11 September 2001 terrorist attacks, the world-historical transformation of the Middle East,<sup>221</sup> the financial collapse of 2008, the Eurozone crisis, the growing challenge to national sovereignty and the convergence of terrorism, narco-trafficking, and transnational criminal organizations, to the rising challenge of an aggressive, nationalist, economically powerful China. Throughout this period the United States has sought to maintain its global leadership to the

point that it is now viewed as a “weary policeman … in an age of austerity.”<sup>222</sup>

This study has sought to establish that understanding China’s URW strategy and recognizing the challenges presented to our operatives by our double-edged commitment to the rule of law is crucial to a successful pivot to Asia. As Robert Martinage noted in testimony before the Congress, in the new security environment one major challenge for SOF is that China, in particular, is displaying characteristics as “a more aggressive political-military competitor of the United States.”<sup>223</sup> The operational implications include shifting from “an episodic deployment force to a persistent-presence force—with more forces forward, in more places, for longer periods of time.”<sup>224</sup> SOF will need to place increased emphasis not only upon unconventional warfare and foreign internal defense, but also upon working more closely with the CIA’s

National Clandestine Service,<sup>225</sup> cooperating through, for example, the flexible detailing of SOF personnel to the CIA, enabling and encouraging more individuals to have careers with assignments in both organizations, and routinely creating interagency task

Figure 9. Special operations forces members of a detachment of the Sichuan Contingent of the Chinese People’s Armed Police Force train in their new combat uniforms. Photo courtesy Ministry of National Defense, People’s Republic of China.

forces to conduct integrated operations in specific regions/countries.<sup>226</sup> In fact, the need to marriage intelligence and operations is the main driver behind Lieutenant General Michael Flynn’s new Clandestine Service inside the Defense Intelligence Agency.<sup>227</sup>

To hedge against the emergence of China as a more aggressive military competitor, SOF will also “need to acquire a few niche capabilities, such as a stealthy airlifter, and expand current capacity in a handful of areas, such as clandestine undersea SEAL delivery and support platforms.<sup>228</sup> Likewise, “more language proficiency will be needed in Chinese dialects (as well as in the languages of neighboring states such as Kazakhstan and Mongolia).”<sup>229</sup> Two options for expanding SOF proficiency in relevant foreign languages



are (1) expanding the number of slots at the Defense Language Institute and providing significant financial bonuses to operators who successfully complete a new course of instruction; and (2) increasing targeted recruitment of native speakers through the 18-X (special forces candidate) program or other mechanisms.<sup>230</sup>

The pivot to Asia-Pacific will also require preparing for air defense threats that will seriously challenge the efficacy of the current fleet of Combat Talons/Spears because, despite all the planned upgrades in electronic counter measures and self-protection systems, they might fall short in clandestinely infiltrating, resupplying, and ex-filtrating SOF in many areas of the world.<sup>231</sup> Therefore, Air Force Special Operations Command is encouraged to accelerate acquisition of a stealthy SOF transport. While the development and fielding of a stealthy M-X will be expensive, the strategic benefits would be immense.

... an M-X for conducting unconventional warfare, information operations, special reconnaissance, and direct action against future adversaries armed with advanced “anti-access” capabilities and possessing significant strategic depth. ... A stealthy M-X would, for example, provide the only practical option for inserting SOF to conduct special reconnaissance and direct action missions in the interior of China where known offensive space control sites, ballistic missile garrisons and hide sites, and other high value targets are located.<sup>232</sup>

As USSOCOM retools for the future and prepares for global operations in an era of austerity, its intelligence requirements must include a thorough knowledge of the capabilities and practices of its rivals’ and potential adversaries’ special forces. In particular, the status of Chinese special operations forces must be closely monitored and scenarios for their likely use in the Pacific region and beyond analyzed to establish the proper countermoves. In 2006, China passed a National Defense White Paper identifying “improving special forces capabilities as one of the Army’s major military modernization priorities.”<sup>233</sup> As recent reports on live-ammunition, anti-terrorism joint training exercises by Chinese special forces with Pakistan (24 November 2011) and Indonesia (3 July 2012) indicate, the PLA is actively mimicking USSOCOM’s partnering strategy.<sup>234</sup> Significantly, the establishment of special research task forces by China suggests that the main

lesson learned by China from analyzing the role of American SOF in the Balkans, Afghanistan, and Iraq is the value of using SOF as a force multiplier to attain strategic objectives.<sup>235</sup>

All levels of command should be exposed to a short but intense U.S. civics course and instruction on the legal principles of the U.S., the Law of Armed Conflict, and relevant local laws. Simulations and training exercises on the application of these laws and real-time legal advice should be made available during operations. Strategy, operations, and tactics need to be balanced against pertinent law; not to further over-lawyer warfare but to make sure that operations and plans are conducted because they are necessary not because they happen to be legal. The end goal is to act wisely not just legally. ♠



Figure 10. Special operations forces from the South China Sea Fleet do a beach landing during an exercise. Photo courtesy of Ministry of National Defense, People's Republic of China.



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